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Supreme Court Of The United States

October Term, 2001

DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C., LEE, Comm., OFFICE OF ADULT PROBATION, ON BEHALF OF ROBERT BOSCO, DIRECTOR, JOHN ARMSTRONG, COMMISSIONER

Petitioners,

v.

SAMUEL POE,
JOHN DOE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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QUESTION PRESENTED

Did the Court of Appeals erroneously conclude, contrary to other courts of appeals and in a manner inconsistent with the Court's ruling in *Paul v. Davis*, that Connecticut's Sex Offender Registration Law implicates an offender's liberty interest by listing offenders in an undifferentiated Registry, and violates due process by failing to afford the offender a hearing regarding his "current dangerousness" before publishing true and accurate information about him and his conviction history?

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LIST OF PARTIES

In both the United States District Court for the District of Connecticut and the United States Court of Appeals for the Second Circuit the plaintiffs are listed as Samuel Poe and John Doe.

In both courts below, the defendants were the Department of Public Safety on behalf of Henry C. Lee, Commissioner of the Department of Public Safety, the Office of Adult Probation on behalf of Robert Bosco, Director, and John Armstrong, Commissioner of the Department of Correction.

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IN THE SUPREME COURT OF THE
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DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, Comm., OFFICE OF ADULT PROBATION, ON BEHALF OF ROBERT BOSCO, DIRECTOR, JOHN ARMSTRONG, COMMISSIONER

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The Petitioners, the Department of Public Safety on behalf of Henry C. Lee, Commissioner, and the Office of Adult Probation, on behalf of Robert Bosco, Director, and John Armstrong, Commissioner of Department of Correction, pray that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Second Circuit entered on October 19, 2001, is reported at *Doe v. Dept. Of Public Safety*, 271 F.3d 38 (2d Cir. 2001), and is printed in the appendix to this petition at (A-1).

The memorandum of decision of the United States District Court for the District of Connecticut, *Chatigny, J.*, dated March 31, 2001, is reported at 132 F.Supp.2d 57 (D.Conn. 2001), and is printed in the appendix to this petition at (A-41).

JURISDICTION

The United States Court of Appeals for the Second Circuit entered judgment or October 19, 2001. The petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1254(1). Justice Ginsburg extended the time for filing this petition until February 18, 2002. This petition is therefore timely filed. Supreme Court Rule 13.1; 28 U.S.C. § 210i(c).

STATUTORY PROVISIONS INVOLVED

[REPRINTED IN APPENDIX]

STATEMENT OF THE CASE

As the Court of Appeals below recognized (A-4), each of the 50 states of the Nation, along with the District of Columbia, has enacted versions of what have become known generally as "Megan's Laws". Such laws require those convicted of certain sexual offenses to register with the State upon release into the community and provide for the disclosure of information gathered through this registry. In enacting these laws, States have responded to public demand for information about sex offenders living in or having access to communities, as well as to Congress' conditioning the provision of federal grant money on the enactment of laws that make registration information available to the public.

In coming into compliance with these federal mandates, states have grappled with a variety of policy questions about the types of information to collect, from which offenders to collect it, and the types and form of information to dispense to the public. Additionally, states have sought to strike the proper balance between dispensing truthful and accurate information and protecting the rights of offenders.

Thus, it is not an exaggeration to state that the constitutional question presented in this case will impact directly upon the Megan's Laws of 50 states, or upon the choices those states have in further refining existing Megan's Laws. Specifically, the Court of Appeals' decision below, if allowed to stand or if adopted in other circuits, will control and hamper a state's ability to deliver to the public truthful, accurate and important information about sexual offenders, and hamper the states' ability to comply with federal mandates.

The respondent-plaintiff, a convicted sex offender,[1] brought suit against the petitioners pursuant to 42 U.S.C. § 1983, claiming that Connecticut's sexual offender registration law, which allowed Internet and public access on request to Connecticut's Sexual Offender Registry (hereinafter "the Registry"), violates the Due Process Clause of the Fourteenth Amendment to, as well as the Ex Post Facto Clause of, the United States Constitution. Under Connecticut's statutory scheme, enacted in response to federal law,[2] the Connecticut State Police (hereinafter "CSP") are required to maintain this Registry, containing a list of all persons convicted of certain criminal sexual offenses and other crimes found by a court to have been committed for a sexual purpose.[3] Connecticut registrants are required to provide information such as their address and personal, identifying characteristics to the CSP for inclusion in Connecticut's Registry.

Under Connecticut's law, the sole criteria for inclusion in the Registry is a person's conviction history. Unlike some other states, Connecticut has eschewed the costly, cumbersome and inaccurate process of ranking sexual offenders by their likelihood to reoffend, and has

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1/ As the Court of Appeals noted, the caption to this case at all three levels has listed two pseudonyms for plaintiffs, but John Doe was and remains the sole plaintiff and appellee. (A-3).

2/ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, Title XVII, § 170101, 108 Stat. 2038 (1994), codified at 42 U.S.C. § 14071; 42 U.S.C. § 3756; 64 Fed. Reg. 572 (1999); (A-4, n.5).

3/ Connecticut's statutory scheme also requires the registration of persons found not guilty of enumerated offenses by reason of mental disease or defect. Conn. Gen. Stat. §§ 54-251(a), 54-252(a), 54-253(a), 54-254(a), 54-255(a), 54-256. The statutes treat both convictions and such findings similarly, so they are collectively referred to throughout this brief as "convictions."

refused to distinguish the level of information available with regard to any individual registrant based upon any such ranking.[4]

Prior to the District Court's injunction in this case, the Registry was available to the public online.[5] The online website of the Registry made available the names, conviction information, and available addresses of the registrants. Significantly, it also prominently and explicitly disclaimed that the state was making any representation or had made any determination with regard to the risk of reoffense or the dangerousness of any given registrant. Indeed, the Registry expressly noted that persons were included in the Registry solely by virtue of their criminal convictions, and stated:

> The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry and has made no determination that any individual in the Registry is currently dangerous.

(A-9).

4/ See, e.g., New Jersey system as described in *Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367 (N.J. 1995); New York system as described in *Doe v. Pataki*, 3 F.Supp.2d 456, 471-72 (S.D.N.Y. 1998); Ohio system described in *State v. Cook*, 83 Ohio St.3d 404, 409, 700 N.E.2d 570 (Ohio S.C. 1998), *cert. denied sub. nom, Cook v. Ohio*, 525 U.S. 1182 (1999).

5/ Conn. Gen. Stat. § 54-258. Also pursuant to the statute, registry information was accessible to the public during normal business hours at the Department of Public Safety office and local information was available at all local police stations and troops. *Id.*

The parties brought cross-motions for summary judgment, and on March 31, 2001, the District Court, granted the respondent-plaintiff's motion, holding that Connecticut's law regarding public access to the Registry violates the Due Process Clause.[6/] Specifically, the District Court held that it was the "undifferentiated" nature of the Registry -- that is, Connecticut's choice **not** to engage in the controversial and inaccurate process of ranking the current dangerousness of sex offenders -- that, when the Registry was made publicly available, "implicitly" communicated that all registrants, including the plaintiff, were "currently dangerous" and likely to re-offend. (A-49, 51-53). The District Court made this determination despite the Registry's prominent disclaimer that the dangerousness and risk of the registrants had not been determined, and that the State was making no representation on that issue. The District Court reasoned that the "undifferentiated nature of the registry stigmatizes [plaintiff] by grouping [him] together with dangerous registrants." (A-42). The District Court discerned in the website and the undifferentiated Registry not only an inherent message of dangerousness, but one that was considered to be potentially false as to the plaintiff-respondent. The District Court also concluded that a registrant's "current dangerousness" is susceptible to being proved or disproved, and therefore, the respondent-plaintiff possessed a liberty interest and a due process right to a hearing on that issue. (A-57).

As a result of its conclusion that the plaintiff's right to procedural due process had been violated, the District Court enjoined the CSP from making Registry information available to the public in any form identifying convicted sex offenders as members of the State of Connecticut

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6/ The District Court granted summary judgment for the defendant-petitioners with regard to the Ex Post Facto claims raised by respondent-plaintiff. (A-42).

Registry. (A-67-69). The District Court did not, however, enjoin the registration requirement of Connecticut's Sex Offender Registration Law (hereinafter "SORL") itself. Convicted sex offenders are still required, under Connecticut law and consistent with the District Court's injunction, to register and provide identifying information to the Department of Public Safety. The State is prohibited, however, from disseminating the truthful and accurate information contained in the Registry. (A-67-69).

The parties both appealed to the United States Court of Appeals for the Second Circuit, which on October 19, 2001, affirmed the District Court's judgment on the Due Process claim, and declined to rule on the Ex Post Facto question the District Court had resolved in the State's favor.[7/] The Court of Appeals did not accept the District Court's reasoning that the Registry, by being available to the public, falsely implied that *all* registrants contained thereon are dangerous, but reasoned instead that the availability to the public of the sex offender registry information amounted to an "implicit" statement that not all, but some of the convicted sex offenders on the Registry, are currently dangerous. (A-17-18). Like the District Court, the Court of Appeals held that this implicit message of dangerousness, although expressly disclaimed on the website, coupled with the registration requirements, sufficed to bestow a liberty interest on registrants. Thus, the Court of Appeals held that a hearing was necessary before a registrant's conviction information could be made available to the public as part of the Registry kept in conformity with federal law. The Court of Appeals therefore affirmed the District Court's injunction prohibiting public access to the accurate and uncontested

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7/ This Court recently received a petition for certiorari (No. 01-729) on the same Ex Post Facto issue in *Otte v. Doe*, 259 F.3d 979 (9th Cir. 2001).

information maintained as a state record on Connecticut's Registry. The Court of Appeals, like the District Court, did not find the registration requirements to be unconstitutional, and did not enjoin the CSP from enforcing the registration requirements for convicted sex offenders within the State of Connecticut. (A-39).

REASONS FOR GRANTING THE WRIT

The Court of Appeals' decision creates a clear split among the circuit courts of appeals on an issue significant to the Nation -- whether a law making available to the public a sex offender's accurate conviction and other information implicates a protected liberty interest. Further, the Court of Appeals' resolution of this issue is plainly contrary to this Court's well-established law regarding whether and to what extent a person has a constitutionally protected liberty interest in his reputation sufficient to invoke procedural due process protections. *See Paul v. Davis*, 424 U.S. 693 (1971); *Codd v. Velger*, 429 U.S. 624 (1977).

Beyond creating a circuit split and resolving a central constitutional question in a way that runs afoul of this Court's precedents, this case is of real and practical significance to the 50 state legislatures and the District of Columbia as they grapple with enacting and refining their versions of Megan's Law. Federal law requires that every state maintain a sex offender Registry, and further requires that every state provide a mechanism for making such Registry information available to the public. In ruling that a state may only make a sexual offender's Registry information available to the public if it undertakes the complicated, costly, and yet unreliable process of offender risk assessment, the decision below impacts, to varying degrees, all of the states' participation in the federal sexual offender registration program. The ruling of the Court of Appeals inappropriately eliminates the discretion afforded

to the states under federal law in that it forces states to undertake risk assessment of offenders as a prerequisite to making concededly accurate information about convicted sexual offenders publicly available.

I. THE COURT OF APPEALS' DECISION CREATES A SPLIT AMONG THE CIRCUITS ON AN ISSUE OF GREAT NATIONAL SIGNIFICANCE

A. The Circuit Split is Clear.

The Court of Appeals' opinion below accurately describes a split among both the circuit courts of appeals and the district courts that have considered whether states' sexual offender registration laws invoke a liberty interest sufficient to implicate procedural due process protections. (A-32-33); Supreme Court Rule 10(a). The Court of Appeals' decision contrasts with the decisions of other circuit courts that have held that no liberty interest adheres to a convicted sex offender seeking to preclude the public from learning that he or she is included in a state registry compiling names and information regarding similarly convicted persons or learning the information contained on the Registry. *See*, *Cutshall v. Sundquist*, 193 F.3d 466 (Tennessee's Law) (reversing the district court), *reh'g en banc denied*, 1999 U.S. App. LEXIS 31557 (6th Cir. 1999), *cert. denied*, 529 U.S. 1053 (2000)[8]; *Russell v. Gregoire*, 124 F.3d 1079 (9th Cir. 1997), *cert. denied sub nom Stearns v. Gregoire*, 523 U.S. 1007 (1998).[9]

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[8] The Sixth Circuit ruled similarly as to Ohio's law. *Bruggeman v. Taft*, 2001 U.S.App. LEXIS 24164 (6th Cir. 2001), No. 01-3380, Oct. 31, 2001.

[9] *See also*, *Corbin v. Chitwood*, 145 F. Supp.2d 92 (D.Me. 2001); *Akella v. Mich. Dep't of State Police*, 67 F.Supp.2d 716 (E.D. Mich. 1999); (finding no liberty interest in Internet system

In *Cutshall, supra*, the plaintiff challenged Tennessee's SORL as violating his right to due process, arguing that both a liberty and a property interest were implicated. 193 F.3d at 478. The District Court agreed "that the provision of the Act allowing for public disclosure of registry information violated these rights, and concluded that Tennessee was required to provide Cutshall with appropriate procedural due process protections before releasing any registry information." *Id.* In reversing the District Court, and rejecting the claim of a liberty or property interest, the Sixth Circuit relied on *Paul v. Davis*, noting that the "Due Process Clause is implicated only when state conduct alters 'a right or status previously recognized by state law.'" *Id.* at 479, *citing Paul*, 424 U.S. at 711.

In *Russell v. Gregoire, supra*, the Ninth Circuit affirmed a District Court ruling that the State of Washington's SORL did not implicate any constitutionally protected interest sufficient to invoke the due process clause, and correctly noted that there is no "general constitutional right to privacy in information collected in a database." 124 F.3d at 1093-94. The Ninth Circuit held: "The information collected and disseminated by the

(E.D. Mich. 1999); (finding no liberty interest in Internet system very similar to Connecticut's, under *Paul v. Davis*). *Lanni v. Engler*, 994 F. Supp. 849 (E.D. Mich. 1998) (finding no liberty interest in compiling "truthful, public information and mak[ing] it more readily available" and finding a hearing to contest accurate information would serve no purpose. *Id.*); *Doe v. Kelly*, 961 F. Supp. 1105 (W.D. Mich. 1997); *cf John Doe #1 v. Williams*, 167 F. Supp.2d 45 (D.D.C 2001), (relying on District Court's decision in this case), *appeal pending*; *and cf, A.A. v. New Jersey*, 176 F. Supp.2d 274 (D.N.J. 2001) (regarding New Jersey's Internet Registry Act and existence of liberty interest as well as Ex Post Facto issue); *Doe v. Pataki*, 3 F. Supp.2d 456 (S.D.N.Y. 1998) (finding a liberty interest not only for persons assessed at middle or high level of risk, but in communication of accurate conviction information only for registrants prior to risk assessment. *Id.* at 466-67).

Washington statute is already fully available to the public and is not constitutionally protected . . . with the exception of the general vicinity of the offender's residence (which is published)." *Id.* at 1093. The Ninth Circuit pointed out that addresses are generally not considered "private." *Id.*

The holdings and reasoning of both *Cutshall* and *Russell* apply equally to this case. The Court of Appeals below, however, chose to depart from her sister circuits.

B. The Court of Appeals' Ruling Forces States to Choose Between a System of No Public Access to Registry Information or a Tiered System Involving Risk Assessment.

As the Court of Appeals noted, the States primarily enacted Megan's Laws in response to a series of federal laws conditioning funding on the states' providing for certain registration and information access regarding convicted sex offenders. (A-4 n.5); *see* 42 U.S.C. § 14071 (A-105); 42 U.S.C. § 3756 (A-116). Federal guidelines provide that states "*must* establish a conforming information release program that applies to offenders required to register on the basis of convictions occurring after the establishment" of the federal registration laws. 64 Fed. Reg. 572, 581 (1999) (emphasis added). The "principal objective of the information release programs will include means for members of the public to obtain information concerning registered offenders." *Id.*[10/]

10/ The federal guidelines further provide, "[I]nformation collected under a state registration program may be disclosed for any purpose permitted under the laws of the state. Therefore, there is no requirements [sic] under the [Wetterling] Act that registration information be treated as private or confidential to any greater extent than the state may wish." 64 Fed. Reg. 572, 581 (1999).

While federal law requires that states make available to the public their registry information, it provides the states with discretion as to how to accomplish this. *Id.* at 582. The federal law and guidelines generally contemplate two systems of disclosure. Under one type of system, a State conducts assessment hearings regarding registrants, classifying the offenders by level of risk.[11/] These systems often result in proactive public notification regarding offenders deemed to have an elevated level of risk of reoffending.[12/]

11/ *See, e.g., E.B. v. Verniero*, 119 F.3d 1077, *reh'g en banc denied*, 127 F.3d 298 (3d. Cir. 1997) (Three-tiered system of sexual offender classification in New Jersey); New York system as described in *Doe v. Pataki*, 3 F. Supp.2d 456, 471-72 (S.D.N.Y. 1998); Ohio system described in *State v. Cook*, 83 Ohio St.3d 404, 409, 700 N.E.2d 570 (Ohio S.C. 1998), *cert. denied sub. nom. Cook v. Ohio*, 525 U.S. 1182 (1999) (Ohio S.C. 1998).

12/ Once an elevated risk level is assigned, law enforcement and other agencies often take an active role in notifying persons who may encounter the registrant. *See, e.g., Artway v. Attorney General of New Jersey*, 81 F.3d 1235, 1244, *reh'g en banc denied*, (3d Cir. 1996) (law enforcement actively notifies members of public likely to encounter offender); *Roe v. Farwell*, 999 F. Supp. 174, 178-79 (D.Mass. 1998) (For Tier 2 and 3 offenders, the local police department required to actively notify community organizations of the existence of a sexual offender nearby. This active notification included utilization of non-governmental media, including "local cable television stations, local newspapers, or the public posting of information"); *State v. Cook*, 83 Ohio St.3d 404, 409, 700 N.E.2d 570 (Ohio S.C. 1998), *cert. denied sub. nom Cook v. Ohio*, 525 U.S. 1182 (1999) (Upholding constitutionality of act in which community notification includes "a statement that the offender has been adjudicated as being a sexual predator or a habitual sex offender").

It must be noted that some law enforcement agencies that do not engage in risk assessment hearings or provide any due process engage in active notification that far exceeds what the lower courts considered here to be stigmatizing. *See, e.g., Corbin v. Chitwood*, 145 F. Supp.2d 92 (D. Me. 2001) (District Court held no interest

Individualized sex offender risk assessment hearings are controversial, however, not only because they are costly, but because their results are inexact and, even among experts in the field, are not considered necessarily reliable. Connecticut's highest court has noted this lack of reliability, stating: "Partly because there are no psychological or physical signs or symptoms which can be reliably used to discriminate between the potentially dangerous and the harmless individual . . . predictions of future dangerousness are tentative at best and are frequently conceded, even within the profession, to be unreliable." *State v. Putnoki*, 200 Conn. 208, 219-20, 510 A.2d 1329 (1986) (Peters, C.J.) (citations and quotations omitted).

Federal law does not *require* States to adopt risk assessment mechanisms in undertaking public notification. 64 Fed. Reg. at 582. In fact, a number of states, including Connecticut, eschew a risk assessment system, opting instead for a passive, "information on request" system. According to one commentator, such "compulsory" registry systems without individualized risk assessments have been adopted in nineteen states. Wayne A. Logan, A Study in "Actuarial Justice: Sex Offender Classification Practice and Procedure", 3 Buff. Crim. L. Rev. 593, 603 (2000). This alternate information system, as implemented in Connecticut and other states, was described by the District Court as "undifferentiated". (A-42). These systems provide information regarding persons convicted of certain enumerated offenses to the public without attempting to determine or announcing a determination regarding the risk of re-offense.

The Court of Appeals' ruling in this case essentially eliminates a state's discretion to utilize an undifferentiated,

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sufficient to implicate due process in police department's utilization of fliers disclosing conviction record and utilization of the media for a public announcement regarding public safety threat of convicted offender).

"information-on-request" system, and mandates that states establish a system that provides every registrant a hearing to determine the risk of any given offender's re-offense (i.e. is the offender "currently dangerous?") with a corresponding tiered system of information accessibility, if not proactive notification.[13/] Tiered systems might require a full panoply of due process protections, such as the right to an appeal, an attorney, and/or an expert witness at State expense for indigent registrants.[14/] Not only is such a tiered system cumbersome and expensive, but it is intrinsically less accurate than a system in which there is no subjective information relayed, but only objectively true information. At the very least, the accuracy and reliability of such a system is the subject of great debate among scholars, practitioners and elected representatives.

The federal guidelines provide that an acceptable means of complying with the mandated registry information release requirement is to "make information

13/ The District Court was candid in its view that a tiered system is constitutionally mandated, stating: "In a tiered system, a recipient of a registrant's information can discern the dangerousness of that registrant relative to the universe of sex offenders. By omitting to provide such relative information, Connecticut's system has the effect of falsely suggesting that nondangerous registrants are in fact dangerous." (A-53). The District Court's logic assumes, based on thin air, that any tiered system can lead to an accurate "discern[ing of] ... dangerousness." *Id.*

14/ See, *e.g.*, *Doe v. Poritz*, 142 N.J. 1, 662A.2d 367, 382-83 (N.J. 1995) (New Jersey's tiered system, as distinguished from recently enacted Internet system, requires judicial review of administrative hearing, notice, right to counsel, state-provided counsel if indigent, discovery, burden of persuasion by clear and convincing evidence on the state, and the right to an appeal); *Doe v. Pataki*, 3 F.Supp.2d 456, 471-72 (S.D.N.Y. 1998) (requiring New York to provide right to counsel for classification hearings, at expense of state in event of indigent registrant, pre-hearing discovery, burden of proof on state by clear and convincing evidence, and right to an appeal).

accessible to members of the public on request." 64 Fed. Reg. at 582. The guidelines themselves distinguish between "information-on-request systems" and "proactive notification systems." *Id.*[15/] The guidelines make clear, in

15/ Regardless of whether states use a proactive notification system or an information on request system, more than half use or used the Internet to make available information about registered sex offenders. The following is a listing of each states' respective authorizing statutes and sex offender registry web site addresses: Alabama, Ala. Code § 15-20-25 (www.qsiweb.net); Alaska, Alaska Stat. § 18.65.087 (www.dps.state.ak.us); Arizona, Arizona Stat. § 13-3827 (www.azsexoffender.com); Colorado, Colo. Rev. Stat. Ann. § 18-3-412.5 (www.sor.state.co.us); Delaware, Del. Code. Ann. Tit. 11 § 4121 (www.state.de.us/dsp/sexoff); Florida, Fla. Stat. Ann. § 775.21 and § 943.043 (www.fdle.state.fl.us/Sexual Predators/); Georgia, Ga. Code Ann. § 42-1-12 (www.ganet.org/gbi); Hawaii, Haw. Rev. Stat. Ann. § 846E-2 et seq. (www.ehawaiigov.org/HI_SOR); Illinois, 730 Ill. Comp. Stat. Ann. 152/115 (www.isp.state.il.us); Indiana, Ind. Code § 5-2-12-11 (www.state.in.us.serv/cji_sor); Iowa, Iowa Code § 692A.13 (www.state.ia.us/government/dps/dci/isor/); Kansas, Kan. Stat. Ann. § 22-4909 (amended by 2001 Kan. Sess. Laws Ch. 208 to provide explicit authority for maintenance of a statewide Internet sex offender registry (www.ink.org/public/kbi/kbiregoffpage.html); Kentucky, Ky. Rev. Stat. Ann. § 17.510 (http://kspsor.state.ky.us/); Louisiana, La. Rev. Stat. Ann. § 15.540 et seq. (www.lasocpr.lsp.org/socpr/); Maryland, Md. Ann. Code art. 27, § 792 (www.dpscs.state.md.us/sor/); Michigan, Mich. Comp. Laws § 28.730 (www.mipsor.state.mi.us/); Minnesota, Minn. Stat. § 244.052 (www.doc.state.mn.us/level3/level3.asp); Mississippi, Miss. Code Ann. § 45-33-49 (www.sor.mdps.state.ms.us/); Montana, Mont. Code Ann. § 46-23-508 (http://svor.doj.state.mt.us); Nebraska, Neb. Rev. Stat. § 29-4001 et seq. (www.nsp.state.ne.us/sor/find.cfm); New Mexico, N.M. Stat. Ann. § 29.11A-5.1 (www.nmsexoffender.dps.state.nm.us/); New York, N.Y. Correct. Law § 168-q (www.criminaljustice.state.ny.us/nsor/); North Carolina, N.C. Gen. Stat. § 14-208.15 (www.sbi.jus.state.nc.us); South Carolina, S.C. Code Ann. § 23-3-490 (www.sled.state.sc.us); Tennessee Tenn.Code Ann. § 40-39-106 (www.ticic.state.tn.us); Texas, Texas Crim. P. Code Ann. § 62.01 et seq.

fact, that states "cannot comply by having purely permissive or discretionary authority for officials to release registration information." *Id.* at 581. Ironically, all that the lower courts' injunction currently allows is discretionary proactive notification by law enforcement. (A-67-69).

Moreover, to the extent a tiered system restricts public access to information regarding some registrants, it results not only in less accurate information being available, but in less information being available overall. The lower courts' rulings have the further ironic result of providing sex offenders with the constitutional right to keep secret otherwise public and accurate information, generally subject to freedom of information laws. In fact, the lower courts' logic leads to the bizarre result that for a state to release the objective and indisputably accurate information federal law directs states to disseminate, it must add to that information subjective and quite arguably inaccurate information by way of a risk assessment.

Thus, a ruling from the Court in this case would not only resolve a split of authority among the circuits on an important issue that this Court has not heretofore addressed, but would resolve the issue of the extent of any state's discretion in enacting legislation in conformity with the Wetterling Act and related federal law. [16/]

(http://records.txdps.state.tx.us/so search.cfm); Utah, Utah Code Ann. § 77-27-21.5 (www.corrections.utah.gov); Virginia, Va. Code Ann. § 19.2-390.1 (www.vsp.state.va.us); West Virginia, W. Va. Code § 15-12-5 (www.wvstatepolice.com/sexoff); Wyoming, Wyo. Stat. Ann. § 7-19-303 (http://attorneygeneral.state.wy.us/dci/).

16/ This case presents the issue in a clean manner, as Connecticut's system is wholly an "information on request" system, with no risk assessment being performed, and with offenders of certain enumerated offenses listed on the Registry, along with their conviction information but absent any stratification in terms of dangerousness, risk of reoffense, or seriousness of history. It is not a hybrid system. *See, e.g., AA. v. New Jersey*, 176 F. Supp.2d 274 (D.N.J. 2001) (describing dual

II. THE COURT OF APPEALS' DECISION CONFLICTS WITH THIS COURT'S DECISIONS IN *PAUL V. DAVIS* AND *CODD V. VELGER*

The Court of Appeals' conclusion that the public availability of the plaintiff's conviction and identifying information, undifferentiated from other sex offenders, implicates a liberty interest plainly "conflicts with relevant decisions of this Court."[17/] Supreme Court Rule 10(a).

Specifically, in *Paul v. Davis*, 424 U.S. 693 (1971), this Court held that no due process liberty interest could be assigned to a *suspected* shoplifter when police distributed his picture on a flier along with the phrase "Active Shoplifter." The Court made clear that one's "interest in reputation . . . is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." *Id.* at 712. Thus, a mere defamation action cannot comprise a Section 1983 action. State action that consists of merely publicizing defamatory information about an individual

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systems in New Jersey with a tiered risk systems and New Jersey's Internet Registry Act).

17/ While the Court of Appeals' ruling conflicts with this Court's clear holding in *Paul v. Davis* requiring "stigma plus" to implicate procedural due process, this Court has not had occasion to address this issue in the context of Sexual Offender Registration Laws, despite numerous lower court decisions grappling with various constitutional challenges resulting from the wave of such laws enacted during the 1990s. *See, e.g., Femedeer v. Haun*, 227 F.3d 1244 (10th Cir. 2000); *Paul P. v. Farmer*, 227 F.3d 98 (3d Cir. 2000); *Kirby v. Siegelman*, 195 F.3d 1285 (11th Cir. 1999) (per curiam); *Paul P. v. Verniero*, 170 F.3d 396 (3d Cir. 1999); *Artway v. New Jersey*, 81 F.3d 1235 (3d Cir.), *cert. denied*, 1996 U.S. LEXIS 950 (1996).

alone, apart from some more tangible interest such as employment, is neither "liberty" nor "property" sufficient to invoke due process protections. *Id.* at 701.

In *Codd v. Velger*, 429 U.S. 624, 627 (1977) (per curiam), this Court reversed the Second Circuit Court of Appeals and ruled that to allege a viable due process claim, a plaintiff must allege not only a statement that stigmatizes, but that stigmatizes falsely. *Id.* at 627-28. "If [a plaintiff] does not challenge the substantial truth of the material in question, no hearing would afford a promise of achieving that result for him." *Id.*

Paul and *Codd* both compel the conclusion that the "stigma plus" test is not satisfied in the case of a *convicted* sex offender whose picture and conviction information are made available upon request to the public. As Connecticut's Registry contains only concededly accurate and true information, the "implicit" finding by the Court notwithstanding, the respondent-plaintiff's due process claim fails the "stigma" portion of the "stigma plus" test. As importantly, there is no "plus" that flows from the Connecticut Registry sufficient to turn even the plaintiff's "implicit" defamation claim into a liberty interest of constitutional dimension.

A. The Court of Appeals Found "Stigma" In The Dissemination Of Only Accurate And Truthful Information.

In order to reach the conclusion that Connecticut's SORL violates due process, both the District Court and the Court of Appeals did not rely on the truthful and accurate nature of the information disseminated, which both courts conceded.[18/] (A-15). Rather, the lower courts creatively

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18/ Not only is the truth and accuracy of the information contained in Connecticut's Sexual Offender Registry not challenged, it is also information that is, in fact, publicly available pursuant to

resorted to the allegedly false "inference" that might be drawn from that information when the plaintiff's name and information is commingled with that of other sexual offenders: namely, that the plaintiff is "currently dangerous" and likely to reoffend. Under this Court's rulings, the far-fetched and speculative nature of this inference cannot form the basis even of the "stigma" prong of the test for determining a liberty interest. *Codd v. Velger, supra.*

This is so for at least two reasons. First, as mentioned before, Connecticut's Registry specifically and prominently disclaimed the inference the lower courts draw: that the Registry was intended to convey to the public that registrants are dangerous. The Court of Appeals, acknowledging this Statement, concluded that, at the very least, "publication of the Registry *implies* that each person listed is more likely than the average person to be currently dangerous." (A-18). This "implication" the lower courts attributes to the Registry is insufficient, in light of the disclaimer, to constitute a false statement. The lower courts' ruling turns the well-established law of defamation on its head if the publication of true and accurate information regarding persons convicted of crimes can be considered falsely stigmatizing when a recipient of the information might conclude that a convicted felon is more dangerous than "the average person". Indeed, even absent the disclaimer, making a true statement is a fortiori not equivalent to making a false statement.

Secondly, any "inference of dangerousness" comes, not from the Connecticut Registry's availability, structure or insufficient disclaimer, but, as the Court of Appeals itself has noted on a previous occasion, from the crimes the plaintiff has committed. *Doe v. Pataki*, 120 F.3d 1263, 1280, *cert. denied*, 522 U.S. 1122 (1998). ("The societal consequences that flow from a criminal conviction are unlimited"). The false and defamatory implication of "dangerousness" that the Court of Appeals determined to exist solely by means of inclusion in a Registry that specifically disclaims any such implication is, as a matter of law, insufficient to constitute a liberty interest.

Connecticut's state freedom of information laws. Conn. Gen. Stat. § 1-210(a).

Availability of the Registry simply made accurate information more easily accessible. Moreover, to the extent that the available information went beyond conviction information, (i.e., information "already" and still publicly available), it was information that only served to make that information more current and accurate (i.e., this is who the individual was that was convicted). Thus, the lower courts' rulings in this case interfere with the free flow of truthful information, under the guise of precluding a false impression of "dangerousness" in anonymous persons seeking truthful information.[19/]

The lower courts apparently believed that visitors to Connecticut's Registry would lack the sophistication to resist the allegedly false message of dangerousness they believed the Registry connoted. This constitutes a feeble basis for ruling that a liberty interest exists. Further, any risk of an inappropriate or inaccurate inference is more appropriately cured, from a policy and a constitutional perspective, not by eliminating the flow of true and accurate information, but, as this Court has held on numerous occasions in the First Amendment context, by circulating more, not less information in the market place.[20/]

19/ In this regard, a system that attempts to discern and label which convicted offenders are dangerous, not dangerous, or somewhere in between, arguably conveys less accurate information.

20/ "There is . . . an alternative to this highly paternalistic approach. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them." *Virginia Pharmacy Board, v. Virginia Citizens Consumer Council*, 425 U.S. 748, 770 (1975). Justice Brandeis stated eloquently, "If there be time to expose through discussion the falsehood and fallacies, to avert evil by the processes of education, the remedy to be applied is more speech, not enforced silence." *Whitney v. California*, 273 U.S. 357, 377 (1927) (concurring opinion).

B. No Sufficient Plus Factor Exists.

This case is also worthy of this Court's review because of the Court of Appeals' misapplication of the plus element. The Court of Appeals stated: "Although we have applied the 'stigma plus' test many times . . . the import of the 'plus' component remains somewhat unclear." (A-20). Granting review in this case would provide this Court with a timely opportunity to reinforce the "stigma plus" requirements necessary to give rise to a liberty interest.

The courts below determined that the plaintiff had satisfied the "plus" element of the "stigma plus" test, holding that the "plus" element arose not from the "stigmatizing" statement, but from the mandates of Connecticut's law requiring that convicted sexual offenders register with DPS upon release, and provide current address information, fingerprints, a picture and other identifying information or be subject to a Class D felony. (A-7). *See* Conn. Gen. Stat. §§ 54-251(d), 54-252(d), 54-254(b). This holding itself constituted error under *Paul v. Davis*, by relying on legal requirements that exist independently of the allegedly stigmatizing acts of the defendants.

In *Paul*, the defendant police officials circulated fliers containing pictures of criminal shoplifting suspects, not convicted offenders such as the plaintiff-respondent, and containing words directly expressing a threat of further shoplifting activity by those persons identified in the flier, further identified as "Active Shoplifters". *Paul v. Davis*, 424 U.S. 693, 695 (1971). The *Paul* plaintiff faced outstanding criminal charges for shoplifting. *Id.* at 695-96. This Court held that, while the circulation of the flier was stigmatizing, there was nothing else in the factual elements presented to satisfy the "plus" prong of the test for determining the existence of a liberty interest, the "stigma plus" test. *Id.* at 711-712.

Certainly the charges pending against the plaintiff in *Paul* were necessary to his status as perceived by the police defendants as an "Active Shoplifter." *Id.* at 695-96. Those charges and the plaintiff's status as someone subject to the criminal process were not considered by this Court, however, to be sufficient to establish the "plus" requirement. The underlying criminal charges, while related to the plaintiff's inclusion in the flier, lacked a sufficient nexus to and were not the result of the stigmatizing behavior of publishing a flier about suspected criminals. *Id.* at 712.

The same is true of the underlying registration requirements the plaintiff is subject to under Connecticut's statutory scheme. While those requirements and the plaintiff's compliance therewith, to some extent, make it possible for the defendants to provide the most *updated* conviction information to the public via the Registry, the registration requirements are not *necessary* to the plaintiff's inclusion in the Registry. To the contrary, the District Court cited the statement published along with the the Registry that "This information is made available for the purpose of complying with Conn. Gen. Stat. § 54-250 et seq., which requires the Connecticut Department of Public Safety to establish and maintain a registry of persons *who are required to register*." (A-47-48).[21/] Persons not complying with the registration requirements were, and are still, listed on the Registry, along with their conviction information, obviously already available to the State

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21/ Despite the lack of a record or any finding supporting this statement, and in the face of the above finding by the District Court to the contrary, the Court of Appeals erroneously claimed, "The requirement that sexual . . . offenders register with the State --[is] a requirement that . . . is a necessary predicate for the stigmatizing publication of the registry". (A-34-35). Connecticut law in no way prohibits inclusion in the Registry of the names, conviction records and other information regarding registrants not in compliance with the registration requirements.

Police, and other registry information the State Police happen to have. The District Court did not enjoin this.

Thus, as in *Paul v. Davis*, the registration requirements, while related to the plaintiff's inclusion in the Registry, lack a sufficient nexus to and are not the result of the alleged "stigmatizing" behavior, and are therefore insufficient to constitute the "plus" element. Indeed, were the state to provide the requested relief in this case, a hearing, there would be no change to the registration requirements; there would likewise be no factual allegations to challenge. A proper application of *Paul v. Davis* by the Court of Appeals would therefore have produced a different result.

The egregiousness of the Court of Appeals willingness to find a "plus" element where none existed is exemplified in its statement that "we hold that a plaintiff establishes a 'plus' factor for purposes of the *Paul v. Davis* 'stigma plus' test only if he or she points to an indicium of material government involvement unique to government's public role that distinguishes his or her claim from a traditional state-law defamation suit." (A-31). This statement by the Court of Appeals runs contrary to the explicit ruling of this Court in *Paul v. Davis* holding untenable the "premise . . . that the infliction by a state officials of a "stigma" to one's reputation is somehow different in kind from infliction by a state official of harm to other interests . . . [T]he weight of our decisions establishes no constitutional doctrine converting every defamation by a public official into a deprivation of liberty." *Paul v. Davis*, 424 U.S. at 701. This Court made that ruling in *Paul* mindful of "the frequently drastic effect of the 'stigma' which may result from defamation by the government in a variety of contexts." *Id.*

The Court of Appeals' holding that the plaintiff had satisfied the "plus" element in the underlying registration requirements for sex offenders cannot be squared with other Supreme Court rulings regarding the necessary finding of a liberty interest. The Court in *Paul* reviewed previous rulings of this court regarding the facts necessary to a determination of a liberty interest. In each of those cases, as well as in *Paul*, the defamatory conduct was only sufficient if, "in the course of" the stigmatizing conduct, the additional burden was imposed. 424 U.S. at 710. This Court noted in *Paul* that in *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), in which the defendant posted a list of *persons who by virtue of the posting*, were deprived of a previously existing right to purchase alcohol.[22/] 424 U.S. at 709. It was the "[p]osting [which] significantly altered her status as a matter of state law, and it was that alteration of legal status which, combined with the injury resulting from the defamation, justified the invocation of procedural safeguards." *Id.* This is to be distinguished from the alleged "plus" in this case, the registration requirements, which the lower courts did not enjoin as part of the remedy for the due process violation, and which exist independently. The posting in *Constantineau* was a single act that simultaneously stigmatized and deprived the plaintiff of another right.

22/ No doubt the registrants in *Constantineau* were obliged to provide information to the State of Wisconsin in order to be included in the Registry of persons no longer allowed to purchase alcohol, yet those obligations were not considered tantamount to a "plus". Moreover, *Constantineau* is distinct from this case in that the posting of a list in that case had a direct result on the plaintiff's ability to enter into a transaction she was previously allowed to enter into. In this case, no one is required to access the Registry at all, and there is no rule that registrants are not allowed to be employed, to enter into agreements with regard to property, or the like.

In this case, the "plus" does not result from the same behavior as the "stigma"; the Registry exists whether or not it is published, or the Registry would have been shut down by the lower courts' injunction. The Registry still exists, as do the registration requirements; only the public's access to the Registry has been enjoined. (A-67-69).

The same is true of *Board of Regents v. Roth*, 408 U.S. 564, 570 (1972) (requiring termination from state employment to occur "*in the course of*" defamation, and stating, "the range of interests protected by procedural due process is not infinite."), and *Goss v. Lopez*, 419 U.S. 565 (1975). In *Goss*, a school a student was simultaneously charged with misconduct and suspended from school. The Court held the plus element was satisfied in the suspension of a state right to education that had occurred simultaneously and as a result of the stigmatizing misconduct charges. *Id.* at 574-75.

The plus element in this case has no temporal nexus with the stigmatizing conduct of the public availability of information, and does not result from the stigmatizing conduct. The Court erroneously stated, contrary to the State law, that the Registry was dependent on compliance with registration requirements by the registrants. In fact, the Registry is only dependent on such compliance to maintain its accuracy--it maintains the list of names, convictions and other information regardless of the level of compliance.

The lower courts have, therefore, impermissibly, stretched the bounds of logic both in their "inference" of falsity in the provision of accurate information and in their derivation of the "plus" element from legal requirements that do not flow from the stigma. There is simply not a sufficient liberty interest adhering to registrants in Connecticut's laws allowing public access to its Registry such that public access to Connecticut's Registry can be enjoined.

CONCLUSION

This case presents a useful opportunity for this Court to instruct the states on how they might accommodate the constitutional rights of convicted sex offenders while complying with federal law in providing citizens with accurate and desired information already in the States' possession. The petitioners submit that Connecticut's statutory scheme is constitutionally acceptable, providing objective, accurate and true information already in the State's possession. Connecticut's Sex Offender Registry in no way implicates a liberty interest, as it neither falsely stigmatizes a registrant nor imposes on him a restraint sufficient to constitute the "plus" element of this Court's "stigma plus" test. The petitioners therefore urge this Court to consider this issue, which impacts the implementation of federal law as well as the law all 50 states either have or may enact pursuant to that law.

Respectfully submitted,
Petitioners

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No. _____

In The
Supreme Court Of The United States
October Term, 2001

DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C., LEE, Comm., OFFICE OF ADULT PROBATION, ON BEHALF OF ROBERT BOSCO, DIRECTOR, JOHN ARMSTRONG, COMMISSIONER

Petitioners,

v.

SAMUEL POE,
JOHN DOE,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

August Term, 2000

(Argued: July 12, 2001 Decided: October 19, 2001)

Docket Nos. 01-7561 (L); 01-7600 (XAP)

JOHN DOE, Individually and on behalf of other similarly situated,

Plaintiff-Appellee-Cross-Appellant,

SAMUEL POE, Individually and on behalf of others similarly situated,

Plaintiff-Appellee,

-v.-

DEPT. OF PUBLIC SAFETY ON BEHALF OF HENRY C. LEE, Comm., OFFICE OF ADULT PROBATION,

On behalf of Robert Bosco Director, JOHN ARMSTRONG, Comm.,

Defendants-Appellants-Cross-Appellees.

Before: CALABRESI, POOLER, and SACK, *Circuit Judges*.

Appeal and cross-appeal from a judgment of the United States District Court of Connecticut (Robert N. Chatigny, *Judge*), inter alia, (i) granting summary judgment to the plaintiff on his claim under 42 U.S.C. § 1983 that Connecticut's sexual offender registration law violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and (ii) entering declaratory and permanent injunctive relief limiting public disclosure of information contained in the registry.

Affirmed

SHELLEY R. SADIN, Bridgeport, CT, (Zeldes, Needle & Cooper; Philip D. Tegeler, of counsel), *for Plaintiffs-Appellees-Cross-Appellant.*

RICHARD BLUMENTHAL, Attorney General, State of Connecticut, Hartford, CT (Gregory T. D'Auria, Henry Alexandre, Margaret Q. Chapple, of counsel), for Defendants-Appellants-Cross-Appellees.

SACK, *Circuit Judge*:

In this appeal, we address the constitutionality of Connecticut's version of "Megan's Law," Conn. Gen. Stat. §§ 54-250-261 (2001), amended by Conn. Legis. Serv. 01-84(West), which requires people convicted or found not guilty by reason of mental disease or defect[1/] of designated

[1/] Because the terms are always used together and carry the same consequences for registrants under the Connecticut sexual offender registry law, see, e.g., Conn. Gen. Stat. §§ 54-251(a), this opinion we use the term "conviction" to include a finding that a person is "not guilty" by reason of mental disease for defect."

crimes to register with the State, and mandates disclosure of the information contained in the registry to the public in printed form and through the State's Internet website. The United States District Court for the District of Connecticut (Robert N. Chatigny, Judge), in a thorough opinion, held that the law violates the plaintiff's[2/] right to procedural due process guaranteed by the Fourteenth Amendment to the United States Constitution but does not constitute an ex post facto law in violation of Article I, § 10 thereof. Doe v. Lee, 132 F.Supp. 2d 57 (D.Conn. 2001) ("Doe v. Lee"). In accordance with this ruling, the court entered declaratory and permanent injunctive relief prohibiting the State from disseminating the registry or disclosing registry information to the public except in limited circumstances. The defendants challenge the issuance of this injunction by appealing the underlying grant of summary judgment to the plaintiff on the due process claim. The plaintiff cross-appeals the court's entry of judgment in favor of the defendants on the ex post facto challenge.

We are keenly aware of the legitimate and pressing importance that the Connecticut legislature attaches to the State's ability to disseminate information about former sex offenders, principally in order to protect the health and welfare of the State's children. The particular legislative instrument it has chosen to employ, however, is too blunt properly to achieve that end. It fails to accommodate the constitutional rights of persons formerly convicted of a wide range of sexual offenses who are branded as likely to be currently dangerous offenders irrespective of whether or not they are. We therefore affirm.

[2/] Although the caption lists two pseudonymous plaintiffs bringing suit on their own behalf and the "behalf of others similarly situated," for the sake of relative simplicity, we treat John Doe as the sole plaintiff and appellee; he appears to be the sole cross-appellant.

BACKGROUND

I. The Connecticut Law

Like every other state,[3] Connecticut has enacted a version of "Megan's Law,"[4] which requires people convicted of certain criminal offenses, most of them sexual in nature, to register with the State upon their release into the community and provides for disclosure of information gathered through this registry.[5] As amended most recently in 1999, Connecticut's version of the law requires registration of people who have been convicted of crimes that fall within four statutorily defined categories: criminal offenses against a victim who is a minor,[6] nonviolent sexual offenses,[7] sexually violent offenses,[8] and felonies committed for a sexual purpose.[9] See Conn. Gen. Stat. §§ 54-250(2), (5), (11), (12), 54-251(a), 54-252(a), 54-254(a).[10]

3/ See Roe v. Farwell, 999 F.Supp. 174, 177 n.1 (D.Mass. 1998); Wayne A. Logan, Liberty Interest in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws, 89 J. Crim. Law & Criminology 1167, 1172 (1999).

4/ The original Megan's Law was enacted in New Jersey "to identify potential recidivists and alert the public when necessary for the public safety," Paul P. v. Farmer, 227 F.3d 98, 99 (3d Cir. 2000) (citation and internal quotation marks omitted), and was named in memory of seven-year-old New Jersey resident Megan Kanka, who in 1994 was sexually assaulted and murdered by a neighbor twice convicted of sexual offenses. See Id.; Doe v. Pataki, 120 F.3d 1263, 1265 n.1 (2d Cir. 1997); E.B. v. Verniero, 119 F.3d 1077, 1081 (3d Cir. 1997). As we explained in Roe v. Office of Adult Probation, 125 F.3d 47, 48 (2d Cir. 1997), and in Pataki, such laws were spurred by "[t]he seriousness of the harm that sex offenders' actions cause to society and the perception, supported by some date, that such offenders have a greater probability of recidivism that other offenders." Pataki, 120 F.3d at 1266.

5/ Federal law renders states that fail to enact such laws ineligible for ten percent of a formula grant that they would otherwise receive under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, codified at 42 U.S.C. § 3756. See 42 U.S.C. § 14071(g)(2)(A); Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 64 Fed. Reg. 572, 581-82 (Jan. 5, 1999). (Jacob Wetterling was an eleven-year-old St. Joseph, Minnesota, boy who was abducted by a masked man near his home in 1989 and has never been found. See United States v. Green, 983 F.2d 100, 100-01 (8th Cir. 1992); the Jacob Wetterling Foundation JWF Online, at http://www.jwf.org/jwf_about.html (last visited Aug. 23, 2001).) Connecticut's registration and notification system is compliant with, but not mandated by, the federal standards. See Final Guidelines, 64 Fed. Reg. at 581-82. The federal law is not challenged in this appeal

6/ "Criminal offense[s] against a victim who is a minor" are defined in Conn. Gen. Stat. § 54-250(2) to include kidnapping, unlawful restraints, and a wide variety of sexual acts against persons under the age of eighteen made criminal by various other specified Connecticut statutes.

7/ "Nonviolent sexual offense[s]" are defined in Conn. Gen. Stat. § 54-250(5) as violations of Conn. Gen. Stat. § 53a-73a, which renders a wide variety of sexual acts Class A misdemeanors

8/ "Sexually violent offenses" are defined in Conn. Gen. Stat. § 54-250(11) to include certain levels of sexual assault, and also kidnappings that the court finds were "committed with intent to sexually violate or abuse the victim." Id.

9/ The sentencing court determines whether a felony was committed for a sexual purpose. Upon such a finding, the sentencing court may require the offender to register as a sexual offender. See Conn. Gen. Stat. § 54-254(a).

10/ The law also covers any Connecticut resident who has been convicted in another jurisdiction of a

A. Registration

Registration requirements vary depending on the type of crime for which a particular person is convicted and thereby becomes subject to the registration law. A person convicted of a criminal offense against a minor or of a nonviolent sexual offense must register with the Connecticut Department of Public Safety ("DPS") for ten years beginning within three days following his or her release into the community.[11/] See id. § 54-251(a). In addition, a person convicted of a felony committed for a sexual purpose can also be required to register for ten years at the discretion of the sentencing court. See id. § 54-254(a). Finally, a person convicted of a sexually violent offense must register for the remainder of his or her life. See id. § 54-252(a).

Each registrant must provide the DPS with his or her name, "identifying factors" including fingerprints, a photograph, a list of other identifying characteristics, and a blood sample for DNA analysis, see id. § 54-250(3), criminal history record, and his or her residence address, see id. §§ 54-251(a), 54-252(a), 54-254(a), which must be verified once a year, see id. § 54-257(c). A person convicted of a sexually violent offense also must provide "documentation of any treatment received for mental abnormality or personality disorder," see id. § 54-252(a),

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crime "the essential elements of which are substantially the same as any of the crimes" within the statutory categories. See id. § 54-253(a).

11/ Groups of offenders within two categories must register for life: (i) anyone who has committed a criminal offense against a minor or a nonviolent sexual offense and has a prior conviction of the same type, and (ii) anyone convicted of the crime of sexual assault in the second degree for engaging in sexual intercourse with a victim who is under thirteen years old and more than two years younger that the perpetrator. See Conn. Gen. Stat. § 54-251(a).

and must verify his or her address once every ninety days, see id. § 54-257(c).

A person convicted of a sexually violent offense, by contrast, must register for the remainder of his or her life, see id. § 54-252(a), and, in addition to the standard name, address, criminal history, and "identifying factors" registration, must provide the State with "documentation of any treatment received for mental abnormality or personality disorder." Id. § 54-252(a). Such a person must verify his or her address once every ninety days. See id. § 54-257(c).

Certain additional obligations apply to all registrants regardless of their underlying conviction. Anyone subject to the law who moves to a new residence must inform the State of his or her current address within five days. See id. §§ 54-251(a), 54-252(a), 54-254(a). If a registrant regularly travels into or temporarily resides in another state, he or she must register with the responsible agency there and comply with whatever additional duties that state imposes on sex offenders.[12/] See id. Each registrant must abide by the statute's address verification requirements by completing and returning to the State within ten days of receipt a nonforwardable verification form. See id. § 54-257(c). Finally, anyone subject to the law must submit to having his or her photograph taken at a specified location whenever the State so requests, see id. §§ 54-251(a), 54-252(a), 54-254(a), at least once every five years, see id. § 54-257(d). Failure to comply with any of these duties constitutes a class D felony, punishable by up to five years in prison. See id. §§ 54-251(d), 54-252(d), 54-253(c), 54-254(b).

B. Disclosure and Public Notification

The statute also obligates DPS to compile the information gathered through the registration process in a central registry and to share that information with local police departments, state police troops, the Federal Bureau

12/ The law also imposes a reciprocal obligation on anyone who is registered and lives in another state but regularly travels into or temporarily resides in Connecticut. See. Conn. Gen. Stat. § 54-253(b).

of Investigation, and coordinate agencies in other states in which registrants reside. See id. § 54-257(a).

The DPS must also make the registry available to the public "during normal business hours." Id. § 54-258(a)(1). And the DPS is required to post registry information on the Internet, see id. § 54-258(a)(1), something it did until the practice was enjoined by the district court in this litigation. The DPS, also pursuant to statutory prescription, "[n]ot less than once per calendar quarter . . . [is required to] issue notices to all print and electronic media in the state regarding the availability and means of accessing the registry." Id. Local police departments and state police troops are required to make the registry available for public inspection during office hours. See id. The following warning must be posted wherever the registry is open to public view: "Any person who uses information in this registry to injury, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution." Id. § 54-258a.

The primary means of disseminating registrant information to the public was the "Sex Offender Registry" Internet database maintained by the DPS,[13] which, until it was shut down pursuant to the injunction issued by the district court, could be reached through the websites of several television stations, as well as through the official homepage of the State of Connecticut, http://www.state.ct.us.[14] Anyone with access to the

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13 The statute does not itself give a name to the registry. The State refers to it, and referred to it on the Internet site, as the "Sex Offender Registry," although it includes persons convicted of several crimes "against a victim who is a minor" that are not necessarily sexual in nature. See Conn. Gen. Stat. § 54-251(a).

14 The website, which was first made available on January 1, 1999, was shut down on May 18, 2001 pursuant to the permanent injunction issued by the district court. During its first five months of operation, the website was visited more than three

Internet was able to search the database by zip code or town name, which produced a list of all registrants within the scope of the search, or by last name or first letter thereof. Every name that was produced through such a search yielded a direct link to another page entitled "Registered Sex Offender" containing the registrant's name, address, photograph, and physical description.

Sometime between December 1998 and May 1999, the following statement was added to the first page of the Sex Offender Registry website:

> This information is made available for the purpose of complying with Connecticut General Statutes § 54-250, et seq. . . . . The registry is based on the legislature's decision to facilitate access to publicly-available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this date on the Internet is to make the information more easily available and accessible, not to warn about any specific individual. Anyone who uses this information to injure, harass, or commit a criminal act against any person included in

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million times.

We are somewhat handicapped by our inability to view the website in its actual form or context because the site is no longer publicly available and neither party has supplied us with an alternative method for obtaining access to it.

the registry or any other person is subject to criminal prosecution.

For part or all of the time it was accessible, the website contained the message: "This information is made available for the purpose of protecting the public."

C. Exclusions and Restrictions

Certain people who would otherwise fall within the scope of the law are eligible for relief from these provisions. Two narrow categories of offenders need not register at all if a court so orders upon a finding that "registration is not required for public safety": anyone who was convicted of engaging, while under nineteen years of age, in sexual intercourse with a victim who was between thirteen and sixteen years old but at least two years younger than the perpetrator; and anyone who was convicted of subjecting another person to sexual contact without the victim's consent. See Conn. Gen. Stat. § 54-251(b), (c).

A court has discretion to order the DPS to restrict public dissemination of information about two other classes of registrants -- those who were convicted either of sexual assault in a spousal or cohabiting relationship or of any crime involving a victim under the age of 18 to whom the offender is related -- if the court finds that publication is not required for public safety and would reveal the identity of the victim. See id. § 540255(a), (b). A registrant who has committed one of several specified offenses between October 1, 1988 and June 30, 1999 may petition the court for an order limiting the dissemination of his or her registration information to law enforcement purposes, provided that the court finds that such a limitation would not threaten public safety. See id. § 54-255(c). This right of petition is also afforded to a person who had been convicted between October 1, 1988 and September 30, 1998 of a crime within the purview of the sex offender law provided that he or she did not serve jail time for the original conviction, has not subsequently been convicted of another crime covered by the law, and has registered within the DPS. See id.

Apart from whatever determinations are made in the course of these proceedings, neither the DPS nor any other agency responsible for administering the registration law affords a person subject to the law an opportunity to be heard on the issue of whether he or she is dangerous or a threat to public safety before requiring that person to register and disclosing the information about him or her to the public.

II. Parties

According to the plaintiff's Fourth Amended Complaint, the plaintiff is a Connecticut resident who has been convicted, based on conduct preceding the law's effective date, of an offense that subjects him to the registration and notification requirements of the Connecticut registration law. He alleges that he "is not a dangerous sexual offender and does not pose a threat . . . . To the community." Doe also represents a class certified by the district court on May 18, 2001 that is defined as "all persons who are subject to the registration and public disclosure requirements of Connecticut's sex offender registry act, Connecticut General Statutes §§ 54-250 et seq., without notice and an opportunity to be heard on the question whether they are dangerous."

The defendants are Connecticut agencies and directors or commissioners of those agencies with responsibilities for the administration of the registration act, all of whom are sued in their official capacities.

III. Procedural History

On February 22, 1999, the plaintiff filed suit under 42 U.S.C. § 1983 alleging that Connecticut's sex offender law violates his Fourteenth Amendment right to procedural due process because it deprives him of a liberty interest -- his reputation combined with the alteration of his status under state law -- without notice or a meaningful opportunity to be heard. He also claims that the law subjects him to punishment for conduct that preceded the date on which the law took effect in violation of the Constitution's Ex Post Facto Clause. See U.S. Const. Art.

I, § 10. The plaintiff also sought to represent two classes, one based on the due process challenge and the other on the ex post facto claim. On behalf of himself and both classes, Doe sought declaratory and injunctive relief prohibiting the State from enforcing the law's registration requirements or publicly disclosing any information contained in the registry.

The plaintiff moved for summary judgment on July 9, 1999. The defendants cross-moved for summary judgment two months later. The district court ruled on these motions on March 31, 2001, granting summary judgment to the plaintiff on the due process claim and to the defendants on the ex post facto challenge.[15] See Doe v. Lee, 132 F.Supp. 2d at 57.

With respect to the due process issue, the court held that the plaintiff had satisfied the "stigma plus" test derived from the Supreme Court's decision in Paul v. Davis, 424 U.S. 693 (1976), and had therefore stated a liberty interest protected by the Due process Clause. See Doe v. Lee, 132 F.Supp. 2d at 63-66. The court reasoned that the plaintiff had met the "stigma" portion of this test because "the registry suggested that plaintiff is currently dangerous," id. at 63, while he asserts that he is not. The court deemed the "plus" component satisfied by the fact that the registration duties imposed upon the plaintiff altered his status under state law. See id. at 64-66. Having thus found that the law deprived the plaintiff of a protected liberty interest, the district court held that the State had not satisfied the mandate of the Due Process Clause because it failed to afford the plaintiff any notice or opportunity to be heard on the issue of his current dangerousness before disclosing his registry information to the public. See id. at 66. On the ex post facto claim, the court held that the plaintiff had failed as a matter of law to demonstrate that the registration law was punitive either in purpose or in effect and therefore granted judgment to the defendants. See id. at 66-71.

15/ On the same day, the court granted the plaintiff's motion to amend his complaint to add an allegation that he is not dangerous, which the court deemed necessary to resolve the due process issue.

On April 18, 2001, the plaintiff filed motions for certification of the due process claim class, for a declaratory judgment, and either for preliminary and permanent injunctive relief on behalf of the class or, in the alternative, for a preliminary injunction in favor of himself. The court issued a permanent injunction on May 17, 2001, prohibiting the defendants from "disclosing or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class if the information identifies the class member as being included in the Registry" and from "identifying any member of the due process class as being included in the Registry." Doe v. Lee, No. 3:99-314 (D.Conn. May 17, 2001) (order granting permanent injunction). The injunction is limited to public disclosure of the sexual offender registry; it does not prevent law enforcement agencies or officers from obtaining access to the registry or using information it contains for the purposes of protecting the public or investigating specific crimes. On May 18, the district court granted the motion for class certification and entered a declaratory judgment in favor of the due process class.

The defendants immediately moved in the district court for a stay of the injunction, which the court denied on May 18, 2001. A divided panel of this Court denied a similar motion after oral argument on June 5, 2001, but expedited the parties' appeal and cross-appeal of the district court's final judgment, which had also been entered on May 18, 2001.

DISCUSSION

I. Standard of Review

We review a district court's grant of summary judgment de novo, constructing the evidence in the light most favorable to the non-moving party. See Tenenbaum v. Williams, 193 F.3d 581, 593 (2d Cir. 1999), cert. denied, 529 U.S. 1098 (2000). Summary judgment is appropriate where "there is no genuine issue as to any material fact and . . . The moving party is entitled to a judgment as a matter of law," Fed. R. Civ. P. 56(c), i.e., "[w]here the record taken

as a whole could not lead a rational trier of fact to find for the non-moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). A fact is "material" for these purposes if it "might affect the outcome of the suit under the governing law . . . ." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

II. Procedural Due Process Claim

We first address the defendants' appeal from the district court's judgment with respect to the due process claim.

The parties agree, as do we, with the district court's conclusion that the "stigma plus" test, first set forth in Paul v. Davis, 424 U.S. 693 (1976), governs the defendants' appeal. In Paul, the Supreme Court held that in order to state a claim under 42 U.S.C. § 1983 for a violation of the Due Process Clause, a plaintiff who complains of governmental defamation must show (1) the utterance of a statement about him or her that is sufficiently derogatory to injure his or her reputation, that is capable of being proved false, and that he or she claims is false, and (2) some tangible and material state-imposed burden or alteration of his or her status or of a right in addition to the stigmatizing statement. See Paul, 424 U.S. at 701-02, 710-11. This requirement is known in this Circuit and elsewhere as the "stigma plus" test. See, e.g., Cannon v. City of West Palm Beach, 250 F.3d 1299, 1302 (11th Cir. 2001); Cutshall v. Sundquist, 193 F.3d 466, 479 (6th Cir. 1999); WMX Techs., Inc. v. Miller, 197 F.3d 367, 376 (9th Cir. 1999); Greenwood v. New York, 163 F.3d 119, 124 (2d Cir. 1998).

A. The "Stigma"

A "stigma" is "[a] mark or token of infamy, disgrace, or reproach . . . ." The American Heritage Dictionary of the English Language 1702 (4th ed. 2000). Publication of the Connecticut Sex Offender Registry plainly "stigmatizes" the people listed on it insofar as it

asserts that they are persons convicted of crimes characterized by the State as sexual offenses. But those assertions are concededly true. The gravamen of "stigma" as part of a due process violation is the making under color of law of a reputation-tarnishing statement[16] that is false. See Codd v. Velger, 429 U.S. 624, 627 (1977) (per curiam) (holding that plaintiff was not entitled to a hearing with respect to derogatory statements about him because "[n]owhere in his pleadings or elsewhere has [he] affirmatively asserted that the [statements in issue were] substantially false"); Quinn v. Syracuse Model Neighborhood Corp., 613 F.2d 438, 446 (2d Cir. 1980) ("[t]o constitute deprivation of a liberty interest, the stigmatizing information must be both false . . . and made public . . . by the offending governmental entity.") (alternations in original; citation and internal quotation marks omitted). The plaintiff therefore asserts not merely stigma, but false stigma: that the Connecticut law "violates [his] due process rights by stigmatizing [him] as [a] presently dangerous sex offender[]," which he maintains is false and gives him a right to a hearing comporting with due process requirements to provide him with an opportunity to prove that he is not in fact a present threat to public safety. Appellee's Br. at 7 (emphasis added); see also Doe v. Lee, 132 F.Supp. 2d at 63 ("Plaintiff contends that he is stigmatized because his inclusion in the registry conveys the false message that he is a dangerous sex offender and a threat to public safety.")

To meet the stigma element of his claim, then, the plaintiff is required to show a stigmatizing statement about him made or to be made under color of law that is capable of being proved true or false. He has only to allege, not prove, that the statement is false in order to establish a due process right to the hearing he seeks. See Brandt v. Bd. of Coop. Educ. Servs., 820 F.2d 41, 43 (2d Cir. 1987). It is at

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[16] Defamation and stigma are virtually synonymous. The "stigma plus" test is sometimes referred to in the case law a "defamation plus" test. See, e.g., Cannon, 250 F.3d at 1302; Herb Hallman Chevrolet, Inc. v. Nash-Holmes, 169 F.3d 636, 645 n.e. (9th Cir. 1999); Greenwood, 163 F.3d at 123, n.3.

such a hearing that the plaintiff would have the opportunity to have his name cleared and the false stigma thus avoided.

The district court concluded that the plaintiff met the stigma element of his claim. The court's opinion is not entirely clear, however, as to how public dissemination of the registry falsely stigmatizes the plaintiff. We read the court's decision as containing two possible explanations: that the registry implies that every person listed therein is in fact dangerous; and that it implies that some of the registrants are dangerous and that each individual registrant is more likely than the average person to be currently dangerous.

As to the first of these possibilities, the court, echoing the plaintiff's argument, stated:

> The stigma question . . . [is] whether, assuming plaintiff is not dangerous, public dissemination of the sex offender registry conveys the erroneous message that he is. The answer to this question must be yes. Despite the accuracy of the registry data concerning the plaintiff and the statement on the web site that no determination of any individual's dangerousness has been made, the registry suggests that plaintiff is currently dangerous.

Doe v. Lee, 132 F.Supp. 2d at 63. The defendants respond that "the inference of dangerousness the [d]istrict [c]ourt drew, and that it assumes the public will draw, from th[e] accurate and public information [contained in the registry] is not supported by any facts in the record." Appellants' Br. at 25. They argue that to the contrary, by including in the website version of the sexual offender registry the statement that the DPS has made no determination that the persons included are "currently dangerous," the State has specifically negated this inference. Id. at 25-26.

We share some of the State's doubt as to whether, as a matter of law, public dissemination of the registry implies to any particular reader, its average reader, or to "an

appreciable fraction" of its readership, Peck v. Tribune Co., 214 U.S. 185, 190 (1909 (Holmes, J.) (defamation action), that every listed person, including the plaintiff, is currently dangerous. The registry purports to be a list of virtually all offenders convicted of covered crimes, not only presently dangerous sex offenders. The website disclaimer enforces that notion, at least to those visitors to the website who actually read it, by implying that the site includes both dangerous and non-dangerous offenders. While the registry thus necessarily communicates the idea that registrants committed covered offenses and thereby implies that they may pose a current danger, we cannot conclude on the record before us that visitors to the website necessarily understood it to say or imply that all of the registrants are in fact currently dangerous. Our inability to reach that conclusion is enhanced by the fact that the website has been shut down and we have no means to examine the registry in the form and context in which actual readers would have viewed it.

But the district court also said:

> The stated purposes of the [law] are to protect the public and facilitate law enforcement. Registration and dissemination serve these goals only because some registrants are likely to reoffend. Thus, the message that some registrants are currently dangerous is, and is intended to be, communicated to viewers of the registry.

Doe v. Lee, 132 F.Supp. 2d at 64 (emphasis added) (footnote omitted). With this we agree. The sexual offender registry conveys the message that some of the persons listed on the registry are currently dangerous; disclosing the identity of persons who are currently a threat to public safety is the sole avowed and legitimate purpose of the registry. Even the disclaimer itself, by asserting that the DPS "has made no determination that any individual included in the Registry is currently dangerous," clearly implies that some may be. But the list is undifferentiated; it

does not say which registrants are or may be currently dangerous and which are not.

We think that it follows that publication of the registry implies that each person listed is more likely than the average person to be currently dangerous. That implication seems to us necessarily to flow from the State's choice of these particular individuals about whom to disseminate information, a record as to their sex offenses, and information as to their current whereabouts. This implication stigmatizes every person listed on the registry. And the plaintiff claims that, as to him, it is false.

If the "plus" factors are present -- a question to which we will turn shortly -- then the plaintiff is entitled to due process in the form of a hearing at which he would have the opportunity to establish that he is not currently dangerous and therefore should not be listed in a publicly disseminated registry in a way that falsely implies that he is particularly likely to be dangerous.

The State of Connecticut contends that by enjoining the publication of the information on the registry, the district court was doing no more than enjoining the dissemination of truthful information about the criminal history of the registrants. That would be troubling if it were so.[17/] We would be deeply concerned about a federal

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17/ The injunction by a court of statements like those contained in the sexual offender registry made by a private individual, a classic prior restraint, would be highly suspect particularly insofar as the statements in issue were true. "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on first Amendment rights." Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 559 (1976). They carry "a heavy presumption against [their] constitutional validity." Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70 (1963). But the parties have not addressed whether a similar analysis is to be engaged in where, as here, a federal court enjoins a state government or official from making statements some of which may be truthful.

court's order the purpose of which was to require the State of Connecticut to keep truths from its citizens. Cf. Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 770 (1976) (deprecating as "highly paternalistic" a state law that, in violation of the First Amendment, sought to protect consumers by prohibiting truthful advertising). We conclude, however, that the district court's order does not target truthful speech. Publication of the registry in its present form implies that persons listed on the registry are particularly likely to be currently dangerous. Unless everyone on the registry is particularly likely to be dangerous, a proposition that the State neither asserts nor embraces, that implication is not true.

The listings alone, true or false -- the "stigmatizing" by the State -- are not, under Paul, actionable as due process violations. But if "plus" factors are present, the plaintiff is entitled to due process to establish whether the implication of likely dangerousness, as applied to him, is false and to prevent its communication to the public until he has had that opportunity and has failed.

B. The "Plus" Factors

Having isolated the "stigma" that the Connecticut sexual offender registry law visits on registrants, then, we must inquire whether there is a "plus" factor that gives rise to a liberty interest under the Due Process Clause.

1. Immunity and employment termination precedents.

Although we have applied the "stigma plus" test many times, see, e.g., Greenwood, 163 F.3d at 123-24; Donato v. Plainview-Old Bethpage Cent. Sch. Dist., 96 F.3d 623, 630-33 (2d Cir. 1996), cert. denied, 519 U.S. 1150 (1997); Valmonte v. Bane, 18 F.3d 992, 998-1002 (2d

Cf. Reno v. Condon, 528 U.S. 141 (2000) (holding that federal statute that prohibited states from disseminating accurate motor vehicle information was not unconstitutional under the Commerce Clause or principles of federalism, without discussing First Amendment implications, if any

Cir. 1994); Martz v. Inc. Vill. Of Valley Stream, 22 F.3d 26, 31-32 (2d Cir. 1994); White Plains Towing Corp. v. Patterson, 991 F.2d 1049, 1062-63 (2d. Cir.), cert. denied, 510 U.S. 865 (1993); Easton v. Sundram, 947 F.2d 1011, 1016-17 (2d Cir. 1991), cert. denied, 504 U.S. 911 (1992); Neu v. Corcoran, 869 F.2d 662, 665-70 (2d. Cir.), cert. denied, 493 U.S. 816 (1989), the import of the "plus" component remains somewhat unclear. See Neu, 869 F.2d at 667 (noting that the meaning of Paul is "not unambiguous" and that "it is not entirely clear what the 'plus' is"). As we noted in Valmonte, 18 F.3d at 1000, this uncertainty arises in part because many of our cases involving "plus" factors were resolved on the basis of a qualified immunity defense. We often eluded the issue of whether the defendant had deprived the plaintiff of a liberty interest, concluding that the defendant was in any event entitled to prevail on grounds of qualified immunity because any such interest was not clearly established at the time of the alleged violation. See, e.g., White Plains Towing Corp., 991 F.2d at 1063-64; Easton, 947 F.2d at 1015-16; Neu, 869 F.2d at 665, 667.[18]

In addition, our cases have typically addressed "stigma plus" claims in the context of termination of government employment. See, e.g., Greenwood, 163 F.3d at 123-24; Donato, 96 F.3d at 630-33; Martz, 22 F.3d at 32; Brandt, 820 F.2d at 45; Baden v. Koch, 799 F.2d 825, 831 (2d Cir. 1986); Quinn, 613, 613 F.2d at 445-47; Gentile v. Wallen, 562 F.2d 193, 197-98 (2d Cir. 1977); Huntley v. Cmty. Sch. Bd., 543 F.2d 979, 985-86 (2d Cir. 1976), cert. denied, 430 U.S. 929 (1977). These cases yield principles that are sometimes difficult to apply in delineating "plus" factors in other contexts. This appears to result at least in part from the fact that the government-employment line of

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18/ We note that these cases were decided before the Supreme Court first "expressed its preference that courts address first the merits of the constitutional claims presented before turning to an analysis of qualified immunity." Medeiros v. O'Connell, 150 F.3d 164, 169 (2d Cir. 1998) (citing County of Sacramento v. Lewis, 523 U.S. 833, 841 n.5 (1998)).

cases harks back to the Court's pre-Paul decision in Board of Regents v. Roth, 408 U.S. 564 (1972). There, the Court observed that although a teacher's termination from public employment does not implicate a liberty interest, it might if the state were to impose "on [the plaintiff] a stigma or other disability that foreclose[s] his freedom to take advantage of other employment opportunities." Id. at 573. In termination cases, court have found based on Roth, that it is the termination that is the "plus" factor establishing a due process violation and the right to a "name-clearing hearing." See, e.g., Donato, 96 F.3d at 630-31. In the case before us, there is no termination of government employment. We therefore look for an understanding of the meaning and function of the "plus" factors by reviewing the history, language, and apparent meaning of Paul and its progeny.

2. "Stigma plus" from Constantineau to Paul. Prior to Paul, the concept of "liberty" in the Due Process clause of the Fourteenth Amendment appears to have been widely understood to encompass a person's interest in his or her good name and reputation, without more. See Laurence H. Tribe, American Constitutional Law § 10-9 (2d ed. 1988). That principle seemed to be established by the Supreme Court's decision in Wisconsin v. Constantineau, 400 U.S. 433 (1971). At issue there was a Wisconsin statute that allowed local officials to post in liquor stores a list of persons who became dangerous after heavy drinking and to forbid persons on the list from purchasing alcohol for one year. The officials were not required to notify targeted persons or allow them to be heard on the issue of whether they deserved to "badge of infamy" that the list imposed upon them. Id. at 437. The Court invalidated the statute, stating that '[w]here a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." Id. at the heart of the Court's reasoning was the recognition that inclusion on the posted list

> may to some be merely the mark of illness, to others it is a stigma, an official branding of a person. The label is a degrading one. Under the [statute], a resident . . . is not

> afforded a chance to defend herself. She may have been the victim of an official's caprice. Only when the whole proceedings leading to the pinning of an unsavory label on a person are aired can oppressive results be prevented.

Id. Chief Justice Burger and Justice Blackmun dissented on procedural grounds but agreed with the majority that "the Wisconsin statute appears, on its fact and in its application, to be in conflict with accepted concepts of due process," and that the Court's decision on the merits therefore "[v]ery likely . . . reach[es] a correct result." Id. at 440 (Burger, C.J., dissenting).

The Supreme Court seemed to reaffirm these "accepted concepts" in two cases decided over the ensuing several years. In Roth, the Court declined to find a protected liberty interest in the termination of a non-tenured teacher's employment at a public university but suggested that such an interest would be implicated if the state imposed "on [the plaintiff] a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities." Roth, 408 U.S. at 573. Citing Constantineau, the Roth Court observed that the state "did not make any charge against [the plaintiff] that might seriously damage his standing and associations in his community. It did not base the nonrenewal of his contract on a charge, for example, that he had been guilty of dishonesty, or immorality. Had it done so," the Court reasoned, "this would be a different case." Id. As we have noted, this comment in Roth became the principal foundation for the jurisprudence of due process claims in connection with defamation (or "stigma") associated with termination of public employment.

Three years later, in Goss v. Lopez, 419 U.S. 565 (175), the Court held that students were entitled to due process before being suspended from public school on charges of misconduct. In addition to recognizing a property interest in the students' "legitimate entitlement to a public education," the Court appeared to conclude that the students had an independent liberty interest in their

reputations. Id. at 574. Again citing Constantineau, the Court reasoned that the school's charges of misconduct "could seriously damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment." Id. at 575. "[T]he claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution." Id.

In its 1976 decision in Paul v. Davis, the Court revisited the issue of government-imposed stigma and reoriented this precedent. The Court addressed a municipal police department's practice of circulating to local merchants flyers displaying photographs of persons deemed to be "active shoplifters." See Paul, 424 U.S. at 695. One such suspected shoplifter filed suit under 42 U.S.C. § 1983, alleging that under Constantineau the distribution of a flyer containing his photograph violated the Due Process Clause because it damaged his reputation without affording him the necessary procedural protection. See id. at 696-97.

Writing for the majority, then-Justice Rehnquist rejected this claim declaring that contrary to the plaintiff's view of Constantineau, an individual's "interest in reputation . . . is neither 'liberty' nor 'property' guaranteed against state deprivation without due process of law." Paul, 424 U.S. at 712. The Court acknowledge that it had "in a number of . . . prior cases pointed out the frequently drastic effect of the 'stigma' which may result from defamation by the government in a variety of contexts." Id. at 701. But in each such case, the Paul Court reasoned, a liberty interest was implicated only because the state had not only stigmatized the plaintiff, but had also impaired or altered some other "more tangible interest[]," such as "a right or status previously recognized by state law." Id. at 701, 711. Thus, the Court observed, the deprivation in Constantineau was stigma plus the loss of the right, previously recognized under state law, to purchase alcohol; in Roth, the Court would have found a liberty interest implicated by stigma only if it was combined with termination of government employment; and in Goss, "liberty" was involved only

because there was stigma plus the extinguishment of the state-law right to public education.

Undergirding this analysis was the concern that a construction of the Due Process Clause under which damage to reputation alone could implicate a liberty interest "would seem almost necessarily to result in every legally cognizable injury which may have been inflicted by a state official acting under 'color of law' establishing a violation of the Fourteenth Amendment." Id. at 699. The Court noted that the plaintiff's complaint "would appear to state a classical claim for defamation actionable in the courts of virtually every State," and that "if the same allegations had been made about [the plaintiff] by a private individual,' he would have nothing more than a claim for defamation under state law." Id. at 697, 698. Only on the basis of the fortuity that a state actor rather than a private party had made the defamatory comment could the plaintiff argue that his suit was "transmuted into one for deprivation . . . of right secured under the Fourteenth Amendment. "Id. at 697-98. Allowing that fortuity alone to establish a constitutional claim, the Court reasoned, would in effect render § 1983 "a font of tort law to be superimposed upon whatever systems may already be administered by the States." Id. at 701.

Paul's interpretation of decisions like Constantineau, Roth, and Goss was thus driven at least in part by "evident concern for values of federalism," Laurence H. Tribe, Unraveling National League of Cities: The New Federalism and Affirmative Rights to Essential Government Services, 90 Harv. L. Rev. 1065, 1101 n. 135 (1977), and more specifically by a resolve to prevent § 1983 from "supplant[ing] traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society," Daniels v. Williams, 474 U.S. 327, 332 (1986). The Court sought, through Paul, to maintain "the delicate balance between state and federal courts and [to respect] the design of § 1983, a statute that reinforces a legal tradition in which protection for persons and their rights is afforded by the common law and the laws of the States, as well as by the Constitution." Albright v. Oliver,

510 U.S. 266, 284 (1994) (Kennedy, J., concurring in the judgment).

The requirement that a plaintiff demonstrate some "plus" factor -- an alteration or impairment of "a right or status previously recognized by state law," Paul, 424 U.S. at 711 -- appears to be central to this effort. If, as some thought before Paul, the Fourteenth Amendment notion of "liberty" encompassed an individual's unadorned interest in his or her reputation, then the issue whether an allegation of "stigma" stated a federal constitutional or state-law claim would depend entirely on whether the defendant happened to be a state officer or a private citizen. A plaintiff who was defamed by a private defendant could sue only in state court on a state law claim; a plaintiff who was defamed by a government actor could sue in federal court on a federal claim. Such a regime would "trivialize the centuries-old principle of due process" by enlarging the scope of the Fourteenth Amendment beyond the type of "arbitrary exercise of the powers of government" against which that provision was intended to guard, Daniels, 474 U.S. at 332, 331 (internal quotation marks omitted), while, at the same time, invading the domain of the states by permitting a plaintiff to bypass common-law tort regimes in favor of the "heavy artillery of constitutional litigation," Steuart v. Suskie, 867 F.2d 1148, 1150 (8th Cir. 1989).

The "plus" requirement avoids this result by ensuring that a plaintiff cannot allege as a deprivation of a constitutionally protected liberty interest an injury that could have been inflicted by a private citizen in a position analogous to the state actor. If the plaintiff can point to some material indicium of government involvement beyond the mere presence of a state defendant to distinguish his or her grievance from the garden-variety defamation claim, courts can be assured that § 1983 will not become "a body of general federal tort law" duplicative of "whatever systems may already be administered by the States." Paul, 424 U.S. at 701.[19]

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[19] The Connecticut law considered on this appeal provides broad immunity from civil suit for persons and entities involved in the maintenance and

Two sources lead further support to this understanding of the "plus" requirement. The first is Siegert v. Gilley, 500 U.S. 226 (1991), the only Supreme Court decision to apply and elaborate on the meaning of Paul. In an opinion by Chief Justice Rehnquist, the Siegert Court held that the plaintiff, a clinical psychologist who had voluntarily resigned from his post at one government hospital and was seeking to be "credentialed" at another, had not established a liberty interest arising from an allegedly defamatory letter written by his former supervisor to a prospective government employer. See Siegert, 500 U.S. at 227-29. The Court explained:

> The statements contained in the letter would undoubtedly damage the reputation of one in [the plaintiff's] position, and impair his future employment prospects. But the plaintiff in Paul v. Davis similarly alleged serious impairment of his future employment opportunities as well as other harm. Most defamation plaintiffs attempt to show some sort of special damage and out-of-pocket loss which flows from the injury to their reputation. But so long as such damage flows from injury caused by the defendant to a plaintiff's reputation, it may be recoverable under state tort but it is not recoverable in a [constitutional] action.

Id. at 234.

The Court did not suggest that the requisite tangible interest or burden needs to meet some threshold of substantiality or that it must implicate a certain kind of interest, but rather that it must at least entail some non-trivial state involvement hat removes the plaintiff's

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dissemination of the registry. See Conn. Gen. Stat. § 54-258(b). The provision of a remedy through § 1983 therefore would not overlap with any remedy provided by the State but rather interfere with the power of the State to establish that there shall be no remedy in specific circumstances

complaint from the realm of traditional state-law defamation. Although "defamation, by itself, is a tort actionable under the law of most States, but not a constitutional deprivation," id. at 233 (emphasis added), an allegation of defamation brigaded with other government action adversely affecting the plaintiff's interests properly invokes the protections of the Due Process Clause and therefore states a claim under § 1983.

The second source of support for our reading of the "plus" component is the Supreme Court's decision in Parratt v. Taylor, 451 U.S. 527 (1981), overruled in part on other grounds by Daniels, 474 U.S. at 330-31. In Parratt, the Court held that where through a state official's misconduct, a plaintiff is stripped of property in circumstances in which pre-deprivation process is not feasible and the post-deprivation remedy provided by the state is adequate, the plaintiff may not bring a § 1983 action for violation of his or her procedural due process rights. See Parratt, 451 U.S. at 541-44. In such circumstances, the Court held, the state post-deprivation remedy provides all the process that is due.

The rationale underlying Parratt parallels that of Paul: "To accept [plaintiff's] argument that the conduct of the state official in this case constituted a violation of the Fourteenth Amendment would almost necessarily result in turning every alleged injury which may have been inflicted by a state official acting under 'color of law' into a violation of the Fourteenth Amendment cognizable under § 1983." Id. at 544. Indeed, Parratt quoted Paul for the proposition that permitting constitutional suits on the basis of random and unauthorized actions by state officials when post-deprivation remedies are adequate "'would make of the Fourteenth Amendment a font of tort law to be superimposed upon whatever systems may already be administered by the States.'" Id. (quoting Paul, 424 U.S. at 701).

The Supreme Court has since suggested a relationship between the Paul and Parratt analysis, see Daniels, 474 U.S. at 332-33, and courts cite the two for the proposition that "the Due Process Clause of the Fourteenth

Amendment . . . Does not transform every tort committed by a state actor into a constitutional violation." Deshaney v. Winnebago County Dep't of Soc. Servs., 489 U.S. 189, 202 (1989); see also, e.g., Mahoney v. Kesery, 976 F.2d 1054, 1060 (7th Cir. 1992) (citing Paul and Parratt for the assertion that "[t]he Supreme Court has been emphatic that not every tort committed by public officers is actionable under the Constitution, even though every one could be thought to deprive the tort's victim of an interest in the nature of liberty or property"). We therefore look to our interpretation of Parratt as a proper source of guidance on the import of Paul.

In McClary v. O'Hare, 786 F.2d 83 (2d Cir. 1986), we held that Parratt does not apply to substantive due process claims because substantive due process violations are "'complete as soon as the prohibited action is taken'" and therefore do not depend upon the adequacy of any pre- or post-deprivation remedies. McClary, 786 F.2d at 86 n.3 (quoting Daniels, 474 U.S. at 338 (Stevens, J., concurring in the judgment)). But this conclusion could effectively swallow the Parratt rule, at least in those cases -- such as McClary itself, where the plaintiff's decedent lost his life -- in which a plaintiff whose procedural due process suit would be barred by Parratt could instead plead the claim as one for a violation of substantive due process. See Id. at 88-89; see also Albright, 510 U.S. at 285 (Kennedy, J., concurring in the judgment) (observing that Parratt could be avoided by "attaching a substantive rather than procedural label to due process claims"). This would thwart the purpose of Parratt by permitting federal constitutional claims to proceed on the basis of conduct that the Court has deemed insufficient when farmed in procedural terms.

Our analysis in McClary parallels a federalism- based interpretation of the Paul "plus" factors. We were presented in McClary with both substantive and procedural due process claims against state and county officials brought by the administratrix of the estate of a highway worker who was killed by a falling crane while working on a government project. 786 F.2d at 84-85. We first rejected the procedural due process claim on the basis, inter alia, of Parratt, id. at 86-88, and then turned to "[t]he more difficult question . . . [at] the heart of this case": "when a deprivation

of life or liberty assumes constitutional dimensions" for purposes of substantive due process. Id. at 88.

We began our discussion by observing that the Due Process Clause was designed to guard against abuses of "governmental power." Id. (citation and internal quotation marks omitted). We then noted that, as was the case in Daniels, no such abuse of state authority had been alleged; "the only fact distinguishing [the plaintiff's complaint] from an ordinary tort action . . . is the identity of [the defendant]." Id. at 89. We reasoned that where "identical actions could have been carried out by a private [defendant], for the same reasons and with the same regrettable consequences," substantive due process was not implicated. Id. Only where the defendant's action is "governmental in nature" -- where "a government official, because of his unique position as such, was able to impose a loss" -- would the protections of the Fourteenth Amendment come into play. Id. (internal quotation marks omitted). Because the plaintiff could not point to any state activity in the case beyond the mere presence of a state defendant, we dismissed her claim on the ground that "the substantive component of the Due Process Clause does not provide a remedy to a public employee that would not be available to a private employee subject to identical conduct by his employer." Id.

McClary thus held that a plaintiff pleads a deprivation of an interest protected by substantive due process only when he or she demonstrates some state action that distinguishes the allegation from an ordinary tort claim. On similar reasoning, we hold that a plaintiff establishes a "plus" factor for purposes of the Paul v. Davis "stigma plus" test only of he or she points to an indicium of material government involvement unique to the government's public role that distinguishes his or her claim from a traditional state-law defamation suit.

3. The "plus" factor in this case. Applying this holding to the case before us, we agree with the district court that the statutory registration duties imposed on the plaintiff constitute a "plus" factor. Those obligations (1) alter the plaintiff's legal status, and (2) are "governmental in nature,"

cf. McClary, 786 F.2d at 89, insofar as they could not be imposed by a private actor in a position analogous to the state defendants, and therefore differentiate the plaintiff's complaint from a traditional defamation claim brought under state law.

The registration duties imposed by Connecticut's sex offender law are extreme and onerous. With a few exceptions, a person who is required to register because he or she was convicted of a criminal act against a minor, a nonviolent sexual offense, or a felony with a sexual purpose must verify his or her address annually for ten years. See Conn. Gen. Stat. §§ 54-251(a), 54-253(a), 54-254(a), 54-257(c). Anyone who was convicted of a sexually violent offense must do so every ninety days for the rest of his or her life. See id. §§ 52-252(a), 54-253(a), 54-257(c). To conduct this verification, the state mails to a registrant's last known address a nonforwardable form that the registrant must complete and return within ten days of receipt. See id. § 54-257(c). "In the event that a registrant fails to return the address verification form, the Department of Public Safety shall notify the local police department or the state police troop having jurisdiction over the registrant's last reported address, and that agency shall apply for a warrant to be issued for the registrant's arrest. . . ." Id.

Whenever any registrant changes his or her address, he or she must notify the Commissioner of Public Safety within five days. See id. §§ 54-251(a), 54-252(a), 54-254(a). If he or she "regularly travels into or within another state or temporarily resides in another state for purposes including, but not limited to employment or schooling," he or she must notify the Connecticut Commissioner and register with the appropriate agency in the other state. Id. The registrant must also provide blood samples for purposes of DNA analysis when he or she is first registered and must appear at a specified location to have his or her photograph taken whenever the Commissioner requests, see id. §§ 54-250(3), 54-251(a), 54-252(a), 54-253(b), (c), 54-254(a) but at least once every five years, see id. § 54-257(d). Failure to abide by any of these obligations constitutes a class D felony, punishable by

up to five years in prison. See id. §§ 54-251(d), 54-252(b), 54-253(c), 54-254(b).

We think that these obligations, taken together, easily qualify as a "plus" factor under Paul. The imposition on a person of a new set of legal duties, that if disregarded, subject him or her to felony prosecution, constitutes a "change of [that persons] status" under state law. Paul, 424 U.S. at 712. Such action is quintessentially "governmental in nature." McClary, 786 F.2d 89 (citation and internal quotation marks omitted). Moreover, the presence of such an alteration of the registrant's legal rights and duties serves the federalism-based function of the "plus" factor: to ensure that the plaintiff cannot convert a state-law defamation claim into a § 1983 action because of the mere fortuity that he or she is suing a state defendant. The injury that the plaintiff alleges in this case -- stigma plus an alteration of his or her state-law duties and status -- could not have been inflicted by a private person in a position analogous to that of the state. Only a defendant employing his or her "power as a state official" could impose and enforce the duties inherent in Connecticut's sexual offender registry law and then publish the information obtained by those state-imposed duties. Id. (emphasis in original).

The defendants assert that "every federal court that has addressed the issue has held that no liberty interest is implicated in such a context." Appellants' Br. at 23. They are incorrect. Prior to the district court's decision in this case, three other district courts -- including one in the Southern District of New York -- have used similar reasoning to identify a protected liberty interest under the "stigma plus" test. See Doe v. Pryor, 61 F.Supp. 2d 1224, 1231 (M.D. Ala. 1999) (concluding that the imposition of new legal duties and the extinguishment of other rights, including "the right [to] establish a new residence without giving prior notice to government officials," constitute a "plus" factor); Doe v. Pataki, 3 F.Supp. 2d 456, 468 (S.D.N.Y. 1998) ("In light of these requirements placed on registrants, there can be no genuine dispute that registration alters the legal status of all convicted sex offenders subject to the Act. . . . These requirements obviously encroach on the liberty of convicted sex offenders, and, therefore, they

suffer a tangible impairment of a right in addition to mere harm to reputation."); W.P. v. Poritz, 931 F.Supp. 1199, 1219 (D.N.J. 1996) (noting that "stigma plus" can be established "by coupling the reputational damage with the . . .continuing legal status as a registrant and the duties imposed as a result"), rev'd on other grounds sub nom. E.B. v. Verniero, 119 F.3d 1077 (3d Cir. 1997).

Since oral argument of this appeal, moreover, the United States District Court for the District of Columbia has held that a sex offender registry statute similar to Connecticut's infringes upon a protected liberty interest because its registration requirements and long period of supervised release impose an "extraordinary breadth and extent of . . . burdens" which, when combined with reputational harm, satisfy the "stigma-plus" test. Doe v. Williams, No. 01-00407 (ESH), slip op. at 13, 2001 WL ____, at *___, 2001 U.S. Dist. LEXIS ____, at *___ (D.D.C. Sept. 19, 2001).

In addition, the Third Circuit has identified a protected liberty interest in these circumstances, albeit by relying upon a state-created right to privacy rather than the statutory obligations imposed on registrants. See E.B. v. Verniero, 119 F.3d 1077, 1105 (3d Cir. 1997); see also Roe v. Farwell, 999 F.Supp. 174, 196-97 (D.Mass. 1998) (same). State courts, including the Supreme Court of New Jersey in the seminal case of Doe v. Poritz, 142 N.J. 1, 99-106, 662 A.2d 367, 417-21 (1995), have reached a similar conclusion.

It is true that the Sixth and Ninth Circuits have not found a liberty interest in analogous circumstances. See Cutshall, 193 F.3d at 479-82; Russell v. Gregoire, 124 F.3d 1079 (9th Cir. 1997). A substantial number of district courts have held similarly. See, e.g. Corbin v. Chitwood, 145 F.Supp. 2d 92 (D.Me. 2001); Akella v. Mich. Dep't of State Police, 67 F.Supp. 2d 716 (E.D. Mich. 1999); Femederr v. Haun, 35 F.Supp. 852 (D.Utah 1999), aff'd in part, rev'd in part, 227 F.3d 1244 (10th Cir. 2000); Lanni v. Engler, 994 F.Supp. 849 (E.D. Mich. 1998); Doe v. Kelley, 961 F.Supp. 1105 (W.D. Mich. 1997). However, these courts have not necessarily disagreed with the contention

that the ongoing legal obligations of sex offenders registrants constitute a "plus" factor. Neither the Sixth Circuit in Cutshall nor the Ninth Circuit in Russell was presented with such an argument. Instead, the plaintiff in each of those cases claimed that the "plus" factor consisted of the state's intrusion on his or her right to privacy. See Cutshall, 193 F.3d at 479; Russell, 124 F.3d at 1093-94. See also Williams, slip op. At 19-20, 2001 WL ___, at *_-*_, 2001 U.S. Dist. LEXIS ____, at *_-*_ (making similar observations about, inter alia, Cutshall and Russell).

The defendants challenge the conclusion that the Connecticut sexual offender law satisfies the "plus" requirement on two grounds. First, they allege that the registration requirements constitute only a "minimal burden" on registrants, an intrusion no more onerous than that which the federal and state tax laws impose on all citizens and no more inconvenient that the type of obligations one encounters when completing census questionnaires or renewing a driver's license. The notion that meeting the burdens of the Connecticut registry law, which we have described in some detail, is comparable to paying taxes or complying with census and driving registration regulations is breathtaking. But in any event, as we have explained, the dispositive issue is neither the degree of burden inherent in the proffered "plus" factor nor the substantiality of the interest, right, or status affected thereby. Rather, at least when the governmental action is not trivial, the inquiry turns on the character of the action on which the plaintiff seeks to establish the "plus" component. Where, as here, that action is "governmental in nature" -- a characterization supported by the defendants' comparison of the registration requirements to other obligations only the government can impose -- it constitutes a "plus" factor that triggers constitutional protection.

Second, the defendants argue that the registration requirement's relation to the stigma is too attenuated to constitute a "plus" factor. The defendants point out that the stigma arises not from the registration requirement but rather from the publication of the registration information. They contend that the harm of stigma and the additional tangible burden of the "plus" factor must arise from the

same government act. In a similar vein, the defendants point out that a hearing permitting the plaintiff to establish that he is not dangerous would remedy only the stigma while leaving the registration requirement intact. According to the defendants, this demonstrates that the "plus" factor in this case is insufficient.

We are unpersuaded by this argument. Our cases have not required the plaintiff to seek a remedy for both the stigma and the "plus" factor. See, e.g., Donato, 96 F.3d at 633 ("A hearing must be held for the limited purpose of giving a discharged employee an opportunity to clear her name. . . . The employer need not rehire the employee even if she can prove the inaccuracy of the stigmatizing allegations."); Brandt, 820 F.2d at 43 (fired government employee sought a name-clearing hearing but not reinstatement to his position). And we have never required that the stigma and the "plus" factor arise from a single government act. Indeed, in the government employment context, we have required only a "concurrent temporal link" between the separate acts of termination and defamatory statements. See Martiz, 22 F.3d at 32 (collective cases): see also Brandt, 820 F.2d at 44-45 (finding a liberty interest implicated where a government employee had been terminated but where the government had not published the reasons for the termination and the alleged stigma was merely a possible future event).

We think that the temporal nexus between the stigma and the "plus" factor in this case is sufficiently close to support a liberty interest. The information published by the State is obtained by means of the registration requirement, and a person can be stigmatized by publication of the registry only if he or she is first subjected to that requirement. The "plus" factor is thus a necessary condition for the stigmatization. Cf. Valmont, 18 F.3d at 1002 (finding a liberty interest implicated where the state's stigmatizing charges of suspected child abuse were "coupled with a statutory impediment mandating that employers justify hiring" an individual so charged).

Our reason for rejecting the defendants' argument becomes even clearer in light of the "plus" factors' function

of reserving the "heavy artillery" of the Due Process Clause for those cases involving uniquely governmental conduct. The requirement that sexual and other offenders register with the State -- a requirement that can only be imposed by the State and that is a necessary predicate for the stigmatizing publication of the registry -- places this case in that category.

III. Ex Post Facto Claim

The plaintiff cross-appeals the district court's grant of summary judgment to the defendants on his claim that the registration requirements constitutes a punishment in violation of the Ex Post Facto Clause of Article I, section 10 of the Constitution.[20] The district court observed that the Clause prohibits states from applying a new penal sanction to a crime that has already been committed. See Doe v. Lee, 132 F.Supp. 2d at 66 (citing Kansas v. Hendricks, 521 U.S. 346, 370 (1997)); see also Pataki, 120 F.3d at 1272. In performing its analysis of the Connecticut law under the Ex Post Facto Clause, the court turned to our decision in Pataki, id., which established a two-part test to determine whether the law in issue is penal..." "first, whether the legislature intended the statute to be criminal or civil; and, second, if the intent was nonpunitive, whether the statute is so punitive in fact that it cannot legitimately be seen as civil in nature." Doe v. Lee, 132 F.Supp. 2d at 66 (citing Pataki, 120 F.3d at 1273-75).

With respect to the first part of the test, the district court canvassed the "limited legislative history materials" supplied to it by the parties and held that it does not indicate a punitive legislative purpose. Id. at 67. The court noted that "there is nothing in the test [of the law] that suggests the legislature sought to punish sex offenders rather than protect public safety." Id. It also observed differences between the New York sex offender registration law at issue in Pataki and the Connecticut law, including the fact that the former, unlike the latter, provides for individualized

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[20] Art. I, § 10 of the Constitution provides, in relevant part: "No State shall . . . pass any . . . ex post facto law. . . ."

assessment of the dangerousness of the registrant. See. id. at 67-68. The court concluded that the "differences, taken separately or cumulatively and viewed in light of the [Connecticut] legislative history and the structural features indicating a regulatory purpose, do not demonstrate that the legislature acted with punitive intent" in adopting the law. Id. at 68. We find no basis upon which to disagree.

With respect to the second part of the Pataki test -- whether, although regulatory in intent, the registry law is punitive in fact -- the district court, citing Pataki, held that a fact-specific inquiry is required, but that only "the clearest proof" would suffice to meet the test. Doe v. Lee, 132 F.Supp. 2d at 68 (internal quotation marks omitted in original). In making the punitive-in-fact determination, the district court consulted the factors set forth in the Supreme Court in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963).[21/] The court considered two aspects of the Connecticut law that the plaintiff argued indicated a "punitive effect": first, the fact that its registration requirement applies to behavior that is already a crime, and second, a perceived "excessiveness" of its dissemination of information via the Internet. Doe v. Lee, 132 F.Supp. 2d at 68-70. The court concluded: "Neither of these factors by itself, nor the two in combination, establishes by the 'clearest evidence' that the law is punitive in fact." Id. at 68.

As to the first, the fact that registration is triggered by conviction, the district court held that that could not be

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21/ The Mendoza-Martinez considerations are whether the sanction (1) involves an affirmative disability or restraint, (2) has historically been regarded as a punishment, (3) comes into play only on a finding of scienter, (4) will promote the traditional aims of punishment-- retribution and deterrence, (5) applies to behavior that is already a crime, (6) may rationally be connected to an alternative, nonpunitive purpose, and (7) appears excessive in relation to that alternative purpose.

Doe v. Lee, 132 F.Supp. 2d at 68 n.28.

enough to render the statute punitive in fact because that characteristic is "common to all regulatory disabilities that follow from a prior conviction, such as the loss of the right to vote." Id. at 69. "[T]he [Supreme] Court has found such a link insufficient to establish unconstitutionality." Id. (citing United States v. One Assortment of 89 Firearms, 465 U.S. 354, 365-66 (1984); United States v. Ward, 448 U.S. 242, 250 (1980)).

The district court also disagreed with the plaintiff's position that the asserted "excessiveness" of the registry scheme, principally the use of a website for dissemination, made it punitive in fact.

> There can be no doubt that Internet availability of registry information is rationally related to the goals of public safety and law enforcement. Indeed, use of the Internet is the most efficient means of making the information available to residents of the state, and it will become more efficient as Internet accessibility increases over time. Because use of the Internet furthers these nonpunitive purposes, this feature of the [statute] is insufficient to render the statute punitive in fact.

Id. (citation omitted.)

Unlike the question of legislative intent, the punitive-in-fact aspect of the Connecticut sex offender registry statute as written, is problematic. We acknowledged in Pataki that there "the question [was] not free from doubt," 120 F.3d at 1265. We ultimately held, however, that New York's version of a sex offender registration law did not violate the Ex Post Facto Clause, but we based our holding as to the punitive-in-fact inquiry significantly on the tiered structure of the New York law under which the degree of harshness with which registering offenders are treated depends on an individualized assessment of the level of risk to the community posed by each of them See Id. at 1281-83. Connecticut's law provides for no such individualized assessment, a fact at the

core of the plaintiff's challenge to it here. Cf. Doe v. Otte, 259 F.3d 979, 991 (9th Cir. 2001) (striking down Alaska sex offender registry law similar to Connecticut's on ex post facto grounds, calling it "highly significant" that the statute was not limited to persons "pos[ing] a future risk to the community.")

But we need not and do not decide whether, because of the undifferentiated nature of the Connecticut law, the Connecticut statute as written is punitive-in-fact under ex post facto analysis. We have today affirmed the court's injunction under the Doe Process Clause prohibiting the State from disseminating sex offender registry information without giving persons on the registry an opportunity to avoid being listed in a manner suggesting that he or she is probably currently dangerous by establishing that he or she is not. The State of Connecticut therefore stands enjoined from enforcing the registry law in the manner that might also render it punitive-in-fact and therefore unconstitutional under the Ex Post Facto Clause.

In order to provide for a sex offender registry and its dissemination consonant with the injunction that we affirm today, Connecticut will likely adopt new procedures more sensitive to whether those on a widely disseminated register are currently dangerous. The State may choose a scheme clearly permissible under the Ex Post Facto Clause under Pataki. Indeed, it could adopt a law constitutionally indistinguishable from that which we upheld on ex post facto grounds in this case. The plaintiff may of course challenge any new Connecticut law or procedure to determine whether it is consonant with the Ex Post Facto Clause. It will be soon enough to address the issue then.

IV. The Injunction

The district court granted the permanent injunction requested by the plaintiff. The injunction principally prohibits the defendants from "disclosing or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class [including the plaintiff] if the information identifies the class member of the due process

class as being included in the Registry." Doe v. Lee, No. 3:99CV314 (D.Conn. May 17, 2001) (order granting permanent injunction). In arriving at the terms of the injunction, the district court was required to "tailor the remedy to fit the nature and extent of the violation." United States v. Yonkers Bd. Of Educ., 837 F.2d 1181, 1235 (2d Cir. 1987). We conclude that because it is the communication to the public of the fact that the plaintiff (and other members of the class) is in the registry, without a hearing as to the current danger that the plaintiff (and other member of the class) poses, that is both central to the constitutional infirmity of the statute and the principal object of the injunction, the injunction is properly tailored to fit the nature and extent of the violation.

Finally, we note the narrowness of the basis on which we affirm the judgment of the district court and the injunction it contains. We hold only that the plaintiff and the members of the due process class are entitled to the opportunity to have a hearing consistent with due process principles to determine whether or not they are particularly likely to be currently dangerous before being labeled as such by their inclusion in a publicly disseminated registry. We make no judgment as to what form that process should take. And we make none as to what the State may do once such a process is complete if, pursuant thereto, a particular offender is determined not to be currently dangerous or as to whether or to what extent the State may publicly disseminate information about such an offender.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE, *Plaintiff*,	:	CASE NO. 3:99CV0314 (RNC)
V.	:	
DR. HENRY C. LEE ET AL., Defendants.	:	

RULING AND ORDER ON
CROSS-MOTION FOR SUMMARY JUDGMENT

Plaintiff brings this action challenging the constitutionality of the Connecticut sex offender registry act ("CT-SORA"), which requires registration by, and public disclosure of information concerning, persons designated as "sexual offenders." Plaintiff claims that the statute, commonly referred to as Connecticut's Megan's Law, deprives him of a protected liberty interest in violation of the Fourteenth Amendment's Due Process Clause and, as applied to him, violates the Constitution's Ex Post Facto Clause. Cross-motions for summary judgment have been filed on potentially dispositive legal issues regarding liability.[1/] The parties agree that two issues can be decided on the record presented at this stage: (1) whether the CT-SORA imposes a "stigma" on registrants for purposes of the "stigma plus" test used to establish a liberty interest protected by the Due Process Clause; and (2) whether the statute violates the Ex Post Facto Clause.[2/]

1/ Plaintiff's Fourth Amended Complaint contains class action allegations as to both claims. The parties agree that class certification issues should not be decided until after the issues presented by the cross-motions are resolved.

2/ Plaintiff contends that the remaining aspects of the due process claim can be decided at this time as well. Defendants disagree.

Plaintiff's motion for summary judgment on the due process claim is granted essentially because the undifferentiated nature of the registry stigmatizes nondangerous registrants by grouping them together with dangerous registrants.[3/] Plaintiff alleges that he is not dangerous; the registry system alters his legal status (thereby satisfying the "plus" element of the stigma plus test): and the State provided no procedure to determine whether plaintiff is currently dangerous before including him in the registry. Defendants' motion for summary judgment on the ex post facto claim is granted because the legislature did not enact the CT-SORA with punitive intent and the law's effects are not so punishing as to render it punitive in fact. Because the parties have not yet addressed remedies, no ruling is made as to remedy at this time.

Background

A. The Statutory Scheme

In 1998 and 1999, the Connecticut legislature revised the State's version of Megan's Law in ways that spawned this lawsuit. See Public Acts No. 98-111 & 99-183 (codified as C.G.S. §§ 54-250 to -261) (collectively referred to as the "CT-SORA").[4/]

Registration Obligations

Under the CT-SORA, persons who have been convicted or found not guilty by reason of mental disease or defect of enumerated offenses must register with the Commissioner of Public Safety ("Commissioner") within three days of their release into the community. All registrants must provide the same information: name, residence address, criminal history record, fingerprints, a photograph, and a description of such other identifying characteristics as the Department of Public Safety ("DPS") requires (such as scars and tattoos). If a registrant moves he must notify the Commissioner in writing of the new address within five days.[5/] Registrants must also complete and return address verification forms sent to them by the Commissioner and submit to the retaking of a photograph at least every five years. Failure to comply with the requirements of the CT-SORA is a class D felony, punishable by up to five years in jail.

The statute applies to persons convicted of four types of offenses: criminal offenses against a victim who is a

3/ By undifferentiated I mean a system like Connecticut's, which places all registrants in one class for notification purposes -- "sex offender" -- without attempting any individualized assessment of their dangerousness or likelihood or reoffense. One commentator has termed systems without individualized risk assessment "compulsory" registries and has calculated that nineteen states have adopted such systems. See Wayne A. Logan, A Study in "Actuarial Justice: Sex Offender Class Classification Practice and Procedure, 3 Buff. Crim. L. Rev. 593, 603 (2000). The remaining states and the District of Columbia use approaches that involve the exercise of varying degrees of discretion on the part of classifying authorities. See Id. at 606-19. An example of a differentiated, or classified, system is New York's three-tier system, described in Doe v. Pataki, 120 F.3d 1263, 1266-70 (2d Cir. 1997).

4/ Federal law conditions a state's receipt of certain federal law enforcement grants on the creation of a sex offender registry program. See 42 U.S.C. § 14071. Among other things, a state must register persons convicted of certain offenses and provide the information to the F.B.I. And local law enforcement. The federal law requires that the information be released to the extent necessary to protect the public from specific individuals but does not require a state to apply its program retroactively.

5/ If the registrant moves to another state, he must contact and register with any sexual offender registry agency in the other state. Similarly, if a registrant regularly travels to or temporarily resides in another state, he must inform the Commissioner and notify the registry agency in the other state.

minor; nonviolent sexual offenses; violent sexual offenses; and felonies committed for sexual purposes. The burdens imposed on registrants vary depending on the type of offense committed. Some offenders are obliged to maintain their registrations for life,[6/] while others must do so for ten years.[7/] Registrants must complete and return address verification forms either annually[8/] or every ninety days.[9/]

The DPS is required to maintain a central registry of the information submitted by sex offenders. On receipt of an individual's information, the DPS is required to provide it to local law enforcement officials with jurisdiction over the registrant's address.[10/]

6/ Life registrants include persons who were required to register under the pre-1998 version of the CT-SORA; persons who have committed violent sexual offenses; and persons who have committed a second criminal offense against a minor or nonviolent sexual offense.

7/ Ten-year registrants include persons convicted for the first time of an offense against a minor or a nonviolent sexual offense, as well as persons who have committed a felony for a sexual purpose.

8/ Persons who have committed offenses against a minor, nonviolent sexual offenses, or felonies with sexual purposes are subject to annual verification.

9/ Persons who have committed violent sexual offenses must return forms every ninety days.

10/ If the registrant's address is in another state, the DPS must provide the information to the registry agency in the other state. See C.G.S. § 54-257(a). For all registrants, the DPS must transmit all registration information, conviction data, photographs, and fingerprints to the F.B.I. See Id.

Public Disclosure

The DPS must make the registry available to the public in a number of ways.[11/] First, the central registry maintained at the DPS must be available to the public during regular business hours. Second, local law enforcement agencies must make the information that DPS has transmitted to them available during business hours. Third, the DPS is required to make the registry information available over the Internet. Finally, the DPS must annually remind the state's media that the registry exists and provide them with information on how it can be accessed. See C.G.S. § 54-258(a)(1).

An uncodified provision of P.A. 99-183 requires that any dissemination of the registry be accompanied by the following warning: "Any person who uses information in this registry to injure, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution." P.A. 99-183 § 10.

Exemption, Limitation, or Suspension of Registration

Two narrow classes of offenders may be completely exempted from the obligation to register if a court finds that

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11/ The CT-SORA does not require proactive community notification regarding any registrant's information. However, "[a]ny state agency, the Judicial Department, any state police troop or any local police department may, at its discretion, notify any government agency, private organization, or individual of registration information when such agency, said department, such troop or such police department, as the case may be, believes such notification is necessary to protect the public or any individual in any jurisdiction from any person who is subject to registration." See C.G.S. § 54-258(a)(2). The CT-SORA provides no guidelines for how these entities are to exercise their discretion.

registration is not necessary to protect the public. See C.G.S. § 54-251(b), (c)[12/]

The registry data of select other offenders may be restricted by court order to use for law enforcement purposes only.[13/] For any of these offenders, the court may enter an order restricting dissemination of registry information only after finding that public safety does not require general public access to the information.

12/ Persons convicted of fourth-degree sexual assault for subjecting another person to sexual contact without consent are eligible for exemption, as are persons who were under 19 at the time of their offense and were convicted of having sexual intercourse with someone who was (1) more than two years younger than they and (2) between the ages 13 and 16 at the time of the offense.

13/ There are two ways an offender's information can become restricted. First, when the registrant's offense is sexual assault in a spousal or cohabitating relationship, see C.G.S. 53a-70b, or an offense against a person who, at the time of the offense, was under 18 and living in the registrant's household, the court can restrict access to law enforcement if it finds that public dissemination would likely reveal the identity of the victim. See C.G.S. § 54-255(a). Second, certain registrants are entitled to petition for such an order. This right of petition is available to (1) registrants who committed specific offenses between October 1, 1988, and June 30, 1999, regardless of their sentence or subsequent criminal history; and (2) any registrant convicted between October 1, 1988, and September 30, 1998, of any offense requiring registration if he served no jail time as a result of the conviction, has not been subsequently convicted of an offense that requires registration, and has been registered with the DPS as required by the CT-SORA. See C.G.S. § 54-255(c).

Finally, a person's registration is suspended if he becomes incarcerated or civilly committed or takes up residence in another state. See C.G.S. § 54-257(b).

B. Additional Undisputed Facts

The DPS has a procedure in place to respond to challenges to the accuracy or completeness of registry information, but otherwise has no discretion in determining whether individuals must register. Moreover, none of the agencies involved in the registration process (i.e., the DPS, the Department of Corrections, or the Office of Adult Probation) conducts any individualized assessment of the public safety threat posed by an individual when deciding whether he must register.

C. The Web Site

The DPS Sex Offender Registry web site permits any Internet user visiting the site to search and display the information contained in the registry database. The database can be searched by last name, the first letter of a last name, a town name, or a zip code. Searching by town or zip code provides a list of the names of all registrants living in that area.

Clicking on a listed name brings up a web page entitled "Registered Sex Offender." If the registrant has complied with the CT-SORA's requirements, there have been no technical difficulties, and the DPS has had time to process and post the registrant's information, this page contains the registrant's name, offense, current residence address, physical description and photograph.

At the time the parties filed their briefs, the front page of the web site included the following language:

> This information is made available for the purpose of complying with Connecticut General Statutes § 54-250 et seq., which requires the Connecticut Department of Public Safety to establish and maintain a

registry of persons who are required to register under sections 54-250 through 54-254 of the General Statutes. [Those statutes require that certain individuals be included in the registry because of their conviction or finding of not guilty by reason of mental disease or defect of a specified criminal offense and subsequent release into the community on or after October 1, 1988.] The registry is based on the legislature's decision to facilitate access to publicly-available information about persons convicted of sexual offenses. The Department of Public Safety has not considered or assessed the specific risk of reoffense with regard to any individual prior to his or her inclusion within this registry, and has made no determination that any individual included in the Registry is currently dangerous. Individuals included within the registry are included solely by virtue of their conviction record and state law. The main purpose of providing this date on the Internet is to make the information more easily available and accessible, not to warn about any specific individual. Anyone who uses this information to injure, harass, or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution.[14/]

D. The Plaintiff

Plaintiff is required to register under the CT-SORA. He alleges in the Fourth Amended Complaint that he is not

14/ Since the briefs were filed, the DPS has modified the format of the front page and the language quoted in the text no longer appears as a single paragraph; however, the substance of the quoted paragraph remains on the front page.

a dangerous sexual offender and does not pose a threat to the safety of the community. Defendants contend that all the information on the CT-SORA web site regarding plaintiff is accurate and that he provided the information regarding his birth date, address, physical description, criminal offenses, and other identifying information. Plaintiff does not contend that any piece of date is inaccurate.

Discussion

I. Due Process Claim

Plaintiff claims the CT-SORA violates the Due Process Clause of the Fourteenth Amendment. To succeed on this procedural due process claim, plaintiff must demonstrate (1) that the CT-SORA deprives him of a constitutionally protected liberty interest; and (2) that the procedures attending the deprivation are inadequate. See Kentucky Dep't of Corrections v. Thompson, 490 U.S. 454, 460 (1989). To establish a protected liberty interest, plaintiff must satisfy the "stigma plus" test applied in the Second Circuit. See Valmonte v. Bane, 18 F.3d 992, 999 (2d Cir. 1994); Doe v. Pataki, 3 F.Supp. 2d 456, 467 (S.D.N.Y. 1998).

Plaintiff prevails on the due process claim because the State has not provided him with any opportunity to challenge the stigmatizing allegation, implied by his inclusion in the publicly available registry, that he is a dangerous sex offender. The implied allegation, which plaintiff contends is false, arises from the undifferentiated nature of the registry, in which dangerous and nondangerous registrants are grouped in a single classification and no information is provided regarding any registrant's dangerousness. Because there can be no doubt that some registrants are dangerous, Connecticut's single classification falsely suggests that nondangerous registrants are a threat to public safety. In addition to falsely stigmatizing nondangerous registrants, the CT-SORA alters their legal status under state law.[15/]

15/ Defendants suggest that the undifferentiated nature

A. Stigma

Plaintiff first must prove that his "inclusion in the [publicly disseminated sex offender registry] will result in stigma, that is, in 'public opprobrium' and damage to [his] reputation." Valmonte v. Bane, 18 F.3d 992, 999 (2d Cir. 1994) (quoting Bohn v. County of Dakota, 772 F.2d 1433, 1436 n.4 (8th Cir. 1985)). Plaintiff contends that he is stigmatized because his inclusion in the registry conveys the false message that he is a dangerous sex offender and a threat to public safety. Defendant contends that the registry sends no message about a registrant's dangerousness and communicates only the admittedly accurate information that plaintiff has been convicted of a crime requiring registration.

When, as here, a plaintiff seeks not damages but rather an opportunity to be heard in order to establish that a communication about him is false, the plaintiff need only allege-- not prove-- that the communication at issue is not true. See Brandt v. Board of Coop. Ed. Servs., 820 F.2d 41, 42-44, (2d Cir. 1987) (citing Codd v. Velger, 429 U.S. 624, 627 (1977) (finding plaintiff's action for name-clearing

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of the registry requires rejection of plaintiff's due process claim because a hearing would not serve any useful purpose. See, e.g., Defs.' Mem. At 20-21, 30-31. However,

> the fact that a particular jurisdiction's registration and notification scheme does not differentiate among offenders, and thus relies exclusively upon blanket legislative assessment of community danger, should not alter the liberty interest analysis. The constitutional question is not whether offender differentiation is contemplated by the particular statutory scheme in question; rather, it is whether a liberty interest exists sufficient to warrant due process protection.

Wayne A. Logan, Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws, 89 J. Crim. L. & Criminology 1167, 1210-11 (1999).

hearing fatally deficient because of failure to contend that employer's communication was false).[16] Accordingly, to establish that the CT-SORA implicates a liberty interest, plaintiff must establish that the charge against him is stigmatizing, that he alleges it to be false, and that a plus factor is present. Plaintiff satisfies the allegation-of-falsity element by the amendment to his complaint approved today in a separate order. See Fourth Am. Compl. ¶ 4.

The stigma question thus becomes whether, assuming plaintiff is not dangerous, public dissemination of the sex offender registry conveys the erroneous message that he is. The answer to this question must be yes. Despite the accuracy of the registry data concerning the plaintiff and the statement on the web site that no determination of any individual's dangerousness has been made, the registry suggests that plaintiff is currently dangerous. Specifically, the undifferentiated nature of the registry and the undisputed purposes of the CT-SORA make it reasonable for a viewer of the registry to conclude that any particular registrant is dangerous.[17]

16/ Kelly Kare, Ltd., v. O'Rourke, 930 F.2d 170, 177 (2d Cir. 1991), which states that "plaintiff must establish that the information was stigmatizing, false and publicized by the state actor," is not to the contrary. Kelly Kare citing Brandt as the primary authority for the quoted proposition and indicated no disagreement with the distinction made by Brandt between actions for damages and actions seeking a name-clearing hearing. While the Kelly Kare plaintiff did seek an injunction, the decision in that case did not turn on whether the plaintiff had alleged or proven falsity. Rather, the court found that, because the county had been silent as to the reason for its termination of Kelly Kare's contract, there was no communication that could be seen as stigmatizing or false.

17/ Plaintiff contends that the registry's availability on the Internet is by itself an additional contextual factor that conveys the message that registrants are dangerous. Governmental use of the Internet to

The stated purposes of the CT-SORA are to protect the public and facilitate law enforcement.[18/] Registration and dissemination serve these goals only because some registrants are likely to reoffend. Thus, the message that some registrants are currently dangerous is, and is intended to be, communicated to viewers of the registry.

A person viewing any one registrant's information is told that the State has not assessed the registrant's risk of reoffense and has not determined whether he is currently dangerous. While it is true, then, that the viewer has no reason to think the registrant is one of those who is dangerous, the viewer also has no reason to think the registrant is not dangerous. Because there is no classification system, the viewer has neither absolute nor relative information regarding the dangerousness of the registrant. Without such information, the viewer could reasonably conclude that the registrant is likely toreoffend.

Defendant do not dispute that within the group of persons required to register as sex offenders there is significant variation in the likelihood of particular offenders committing another "sex offense."[19/] This variation is

disseminate information is now commonplace, however, and no special message should be associated with the registry simply because it can be accessed via the Internet. Adopting plaintiff's position would prohibit the State from taking information that is already publicly available in its compiled form and making it more ready available.

18/ Defendants contend that these are the statute's purposes. Plaintiff has provided numerous news articles supporting his contention that the State has contributed to public understanding of these purposes through statements made by the Governor, legislators, the Commissioner, and other officials.

19/ This is particularly true for the Connecticut system, under which some of the "sex offenses" do not require any sexual conduct by the registrant.

presumably the reason why other states have adopted a tiered registry and notification system, under which sex offenders are subgrouped according to their individually assessed risk of reoffense. See Doe v. Pataki, 3 F.Supp. 2d 456, 462 (S.D.N.Y. 1998) (describing the New York system, which has low-, moderate-, and high-risk classes). In a tiered system, a recipient of a registrant's information can discern the dangerousness of that registrant relative to the universe of sex offenders. By omitting to provide such relative information, Connecticut's system has the effect of falsely suggesting that nondangerous registrants are in fact dangerous.[20/]

B. Plus Factors

Damage to reputation, without more, is insufficient to establish a liberty interest protected by the Due Process Clause. The stigmatizing conduct must be accompanied by some tangible injury or material alteration of legal right or status. See Paul v. Davis, 424 U.S. at 701, 708; Valmonte v. Bane, 18 F.2d at 999-1000. Plaintiff satisfies this plus element because the registration requirements of the CT-SORA alter his legal status under state law.

The CT-SORA requires registrants to appear at the Department of Public Safety to register or undergo registration processes before their release from incarceration. For at least ten years after that, and possible for life, a registrant must maintain his registration by

These nonsexual sex offenses include various degrees of kidnapping and unlawful restraint when the victim is under 18. While these offenses are classified by the statute as criminal offenses against a minor rather than as violent or nonviolent sexual offenses, registrants convicted of these offenses are still grouped under the label "sex offender."

20/ Cf. Doe v. Pryor, 61 F.Supp. 2d 1224, 1231 (M.D. Ala. 1999) (noting that community notification "strongly implies that [a registrant] is a likely recidivist and a danger to his community.")

completing forms periodically mailed to him by the Department and appearing at the DPS to have his photograph taken at least every five years. During his registration period, a registrant must promptly inform the DPS any time he moves or if he regularly travels to or temporarily resides in another state. If a registrant does move to, regularly travel to, or temporarily reside in another state, he must ascertain if that state has a registration agency and whether he is required to register with it; if that is the case, he must then perform whatever acts are required to comply with the other state's registry program. Failure to comply with any of the registration requirements is a Class D felony, punishable by imprisonment for up to five years.[21/]

Defendants counter with two arguments: first, that the registration requirements are incidental, regulatory burdens, which cannot satisfy the plus element; and, second, that the registration burdens do not measure up to the type of deprivation of a right that the Second Circuit has previously held to be a plus factor.

Defendants' first line of argument misses the mark. The burdens on registrants are significantly more extensive than simply providing change of address information, which is how defendants characterize them. Moreover, while courts have found registration requirements to be regulatory and nonpunitive-- and therefore not an affirmative disability or restraint for ex post facto purposes-- it does not follow that such requirements do not alter a registrant's rights or status under state law.

21/ Relying on my ruling in Doe v. DPS, No. 3:99CV135, slip op. (D.Conn. Mar. 9, 1999) and on Doe v. Pataki, 3 F.Supp. 2d at 468, plaintiff argues that these requirements constitute an alteration of legal status sufficient to satisfy the plus element. The obligations imposed by the CT-SORA as just described are more burdensome than they were when I ruled in Doe v. DPS, and in their current form are more burdensome than the ones described in Doe v. Pataki.

Defendants' second argument, which suggests that the plus factor can come only from a deprivation of employment closely linked to the stigmatizing conduct, is also unavailing. Courts have held that the alteration of legal status and the burdens accompanying registration under a sex offender law satisfy the plus element. See Doe v. Pataki, 3 F.Supp. 2d 456, 468 (S.D.N.Y. 1998); W.P. v. Poritz, 931 F.Supp. 1199, 1219 (D.N.J. 1996); Doe v. Attorney General, 715 N.E.2d 37, 43 (Mass. 1999) (interpreting the Massachusetts Constitution).[22/] Moreover, while Valmonte v. Bane and other Second Circuit cases finding stigma-plus arise in the employment context, Valmonte recognizes that none of those cases "foreclosed the possibility that the 'plus' element could come from some other independent deprivation." Valmonte, 118 F.3d at 1002. Valmonte requires that the plus factor come from a "tangible burden" separate from the "deleterious effects which flow directly from a sullied reputation." Id. at 1001. Paul v. Davis, 424 U.S. 693 (1976), speaks generally of the alteration or deprivation of a legal right or status under state law, see id. at 711-12, and identifies (without using the term) the plus factor in Wisconsin v. Constantineau, 400 U.S. 433 (1971), as the loss of the right to buy alcohol, which has no direct connection with employment, see id. at 708-09.

The burdens imposed by the CT-SORA may entail greater infringement on personal liberty than the type of deprivation at issue in employment cases. In those cases, the government statute, policy, or statement does not mandate any future action by the target of the defamation. Rather, the plus factor is generally satisfied by a one-time event that has already occurred, such as dismissal from an existing job or preclusion from another job. The

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22/ Doe v. Pryor, 61 F.Supp. 2d 1224 (M.D. Ala. 1999), also found a plus factor in the burdens of a sex offender statute, but those burdens went beyond the CT-SORA's registration requirements to include prohibitions on living or working within 1000 feet of a school or day care, residing with a minor child not the registrant's biological or adopted child, and changing one's name. See Id. 1227.

CT-SORA, on the one hand, requires nondangerous registrants to repeatedly take specific actions to facilitate the government's ongoing defamatory communications. This is no small matter. As the Massachusetts Supreme Judicial Court has noted, registration under a sex offender statute is

> a continuing, intrusive, and humiliating regulation of the person himself. To require registration of persons not in connection with any particular activity asserts a relationship between government and the individual that is in principle quite alien to our traditions, a relationship which when generalized has been the hallmark of totalitarian government.

Doe v. Attorney General, 715 N.E.2d 37 at 43. Because the registration requirements alter the offenders' status under state law, they satisfy the plus element and plaintiff has thus established that the registry's "allegation" that he is dangerous implicates a liberty interest protected by the Fourteenth Amendment.[23/]

C. The Process that is Due

Having determined that dissemination of the undifferentiated registry deprives nondangerous registrants of a constitutionally protected liberty interest, I turn to consider whether the procedural safeguards provided by the State are adequate. Due process requires, at a minimum, notice and an opportunity to be heard. See Mathews v.

23/ Plaintiff contends that the stigmatizing conduct denies a protection of reputation guaranteed by Article I, § 10, of the Connecticut Constitution, will have negative effects on the employment prospects and family relationships of registrants, and will likely result in harassing and abusive attacks on registrants. Because the burdens of the registration requirements constitute a plus factor, there is no need to address these other alleged consequences of the CT-SORA.

Eldridge, 424 U.S. 319, 333 (1976). Beyond that, the amount of process due is generally determined under the framework of Mathews v. Eldridge. In this case, it is not necessary to engage in the Mathews balancing because it is undisputed that the CT-SORA provides no procedure to determine a person's dangerousness before he is included in the registry. It suffices to say that under the Connecticut system nondangerous registrants do not have an adequate opportunity to be heard before the deprivation of their liberty interest and thus are denied their Fourteenth Amendment right to due process.

II. Ex Post Facto Clause

Plaintiff's claim based on the Ex Post Facto Clause present the question whether the CT-SORA imposes a penal sanction. The Ex Post Facto Clause forbids application of a new penal sanction to a crime that has already been committed. See Kansas v. Hendricks, 521 U.S. 346, 370 (1997); Doe v. Pataki, 120 F.3d 1263, 1272 (2d Cir. 1997) (hereinafter "Doe"). The Second Circuit has established a two-part test to determine whether a law is penal: first, whether the legislature intended the statute to be criminal or civil; and, second, if the intent was nonpunitive, whether the statute is so punitive in fact that it cannot legitimately be seen as civil in nature. See Doe, 120 F.3d at 1274-75. The features of the CT-SORA on which plaintiff primarily relies (namely, widespread dissemination of registration information with no individualized assessment of dangerousness) make this a somewhat closer case than recent cases in which the Second Circuit rejected ex post facto claims. See Doe; Roe v. Office of Adult Probation, 125 F.3d 47 (2d Cir. 1997). However, I agree with the defendants that the CT-SORA is regulatory in both intent and effect. Accordingly, their motion for summary judgment on the ex post facto claim is granted.

A. Legislative Intent

Public Acts 98-111 and 99-183 are not Connecticut's first enactment of Megan's Law; they are follow-on statutes to an earlier version. The Second Circuit

has stated that the earlier version was enacted in response to concerns "regarding the harm to society caused by sex crimes and the relatively high rate of recidivism among sex offenders." Roe, 125 F.3d at 48. The Connecticut Supreme Court has expressly agreed with the Second Circuit's characterization. See Connecticut v. Misiorski, 738 A.2d 595, 601-602 (Conn. 1999). Given the nonpunitive purpose of the prior law, plaintiff can succeed on his ex post facto claim only if he demonstrates that the legislature acted with punitive intent when it amended the prior law or that the new regime it created is punitive in fact.

The legislature's intend, which can be either express or implied, see Hudson v. United States, 522 U.S. 93, 99 (1997) (citing United States v. Ward, 448 U.S. 242, 248 (1980)), is determined by considering the law's legislative history, its text (including any preamble), and its structural features. See Doe, 120 F.3d at 1276-78. The limited legislative history materials the parties have provided, which are somewhat informative on the issue of intent, do not establish that the legislature abandoned its nonpunitive purpose.[24/] Plaintiff makes no claim that the text of the law

24/ In general, comments of individuals involved in the legislative process do not provide a sure basis for determining legislative purpose. See Doe, 120 F.3d at 1277 (noting that "floor debates are of particularly limited assistance in resolving highly controversial issues of legislative intent.") The views expressed by a law's sponsors, however, are entitled to greater weight than those of other commentators. See Id. Defendants present the Connecticut House Judiciary Committee testimony of Michael Cicchetti, Undersecretary of the Office of Policy and Management ("OPM"), introducing P.A. 99-183, who stated that the purpose of the registry law is to "make it possible for the public to protect itself" and not to impose "additional punishment for [sex] offenders." OPM was one of the many government agencies that participated in a committee established by P.A. 99-111 to monitor the implementation of P.A. 98-111 and to

manifests a punitive intent, and there is nothing in the text that suggests the legislature sought to punish sex offenders rather than protect public safety.[25/] That leaves the statute's structural features.

Several features of the law clearly support a nonpunitive, public-safety orientation: (1) an offender is not required to register, and thus no information can be made publicly available, until the time of his release, cf. Doe, 120 F.3d at 1278 (noting that the offender's assessment is not done until just before release); (2) any public dissemination of registry information must provide a warning that anyone who uses the information to harass a registrant is subject to criminal prosecution; (3) while the class of registrants eligible to petition to be relieved of the registration or notification burdens is narrower than in other systems, the burden on those eligible to petition is to show that they are not a danger to the public; and (4) an offender's registration is suspended when he is in jail or living out of the state and thus does not present a danger to Connecticut residents.

recommend amendments. The bill Cicchetti introduced contained those recommendations, and he can be regarded as speaking on behalf of the bill's sponsors. The floor statements of the sponsors of both bills and their answers to questions, viewed as a whole, also show that the law's purposes are to protect the public and facilitate law enforcement.

Plaintiff cites statements by other legislators, who recognized the detrimental effects on an offender's life that are incidental to registration and notification. Those citations do not establish that those legislatures or any others acted for the purpose of bringing about such effects. As in Doe, plaintiff here has failed to produce legislative history that provides the "'unmistakable evidence of punitive intent' required to demonstrate punitive motivation." Doe, 120 F.3d at 1277 (citing Flemming v. Nestor, 363 U.S. 603, 619 (1960)).

25/ Neither P.A. 98-111 nor P.A. 99-183 contains any preamble or statement of purpose to assist in resolving this question of legislative intent

On the other hand, the CT-SORA differs from the statute in Doe and the policy in Roe in the following ways: (1) the amount of information about a registrant that is revealed, and the way in which it is revealed, is not linked to any individualized assessment of the registrant's dangerousness; (2) some of the safeguards regarding the release of information that were noted by the Doe court are not provided;[26/] and (3) a defendant must be made aware of the registration and notification requirements before entering a guilty plea to an enumerated offense, something apparently not required by the statute in Doe.

These differences, taken separately or cumulatively and viewed in light of the legislative history and the structural features indicating a regulatory purpose, do not demonstrate that the legislature acted with punitive intent when it adopted Public Acts 98-111 and 99-183.[27/]

26/ Unlike the New York statute in Doe, the CT-SORA does not create a new criminal offense for misuse of registry information and does not require any identifying information from a member of the public prior to giving him or her access to the registry.

27/ It bears noting that the individualized assessments in Doe and Roe were part of a system that involved significant, potentially mandatory proactive notification of victims, family, neighbors, employers, and at-risk groups.

Also, while a defendant who seeks to plead guilty must be informed of the potential punishment he could receive, it does not follow that every potential consequence brought to the defendant's attention is an element of punishment. See Cucciniello v. Keller, 137 F.3d 721, 725 (2d Cir. 1998) (recognizing that some "substantial consequences" of a guilty plea are not part of punishment and thus need not be noticed before the plea is taken, but suggesting that judicial officers might nevertheless find it advisable to give such notice).

B. Punishment in Fact

Next, it must be determined whether the statute, though intended to be regulatory or nonpunitive, is nevertheless so punitive in fact as to violate the ex post facto prohibition. This question is highly context specific. See Doe, 120 F.3d at 1275. Moreover, the plaintiff has a heavy burden of showing by "the clearest proof" that the statute is so punitive in form and effect as to render it criminal despite the legislature's intent to the contrary. See Doe, 120 F.3d at 1274. "[F]or the effects of a measure to render it 'punishment,' those effects must be extremely onerous . . . . The only examples the case law suggests of effects sufficiently onerous are deprivation of one's United States citizenship that leaves one a 'stateless person' and a complete deprivation of personal freedom (i.e., incarceration)." E.B. v. Verniero, 119 F.3d 1077, 1101 (3d Cir. 1997).

To guide inquiry at this stage, the Supreme Court and the Second Circuit have considered the factors identified in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1963), while recognizing that those factors are neither exhaustive nor dispositive. See Doe, 120 F.3d at 1275 (citing Ward, 448 U.S. at 249)).[28/] Both courts have also recognized that the factors often point in different directions. See Mendoza-Martinez, 372 U.S. at 168; Doe, 120 F.3d at 1274.

28/ The Mendoza-Martinez considerations are whether the sanction (1) involves an affirmative disability or restraint, (2) has historically been regarded as a punishment, (3) comes into play only on a finding of scienter, (4) will promote the traditional aims of punishment-- retribution and deterrence, (5) applies to behavior that is already a crime, (6) may rationally be connected to an alternative, nonpunitive purpose, and (7) appears excessive in relation to that alternative purpose.

Plaintiff contends that two of the Mendoza-Martinez factors show the CT-SORA to be punitive in fact: (1) the statute's registration requirements are triggered solely by the offender's conviction; and (2) Internet availability of registry data is unnecessary to achieve the statute's stated remedial purposes. Neither of these factors by itself, nor the two in combination, establishes by the "clearest evidence" that the law is punitive in fact.

Tie to criminal conduct The fact that the statute's registration requirement are triggered by an offender's conviction does not establish that the law is punitive in fact. Doe recognizes that such a trigger is common to all regulatory disabilities that follow from a prior conviction, such as the loss of the right to vote. Doe also recognizes that disabilities challenged under the Ex Post Facto Clause and upheld by the Supreme Court in several cases were triggered solely by a prior conviction. See Doe, 120 F.3d at 1281 (citing, among other cases, Hawker v. New York, 170 U.S. 189, 196-97 (1898) (upholding law under which felony conviction was conclusive evidence of lack of fitness to practice medicine)).[29/] See also Cutshall v. Sundquist, 193 F.3d 466, 476 (6th Cir. 1999) ("[A]lthough the registration and notification provisions are intertwined with the offender's underlying conviction, they impose no additional penalty . . . ."). Even in plaintiff's main case on this point, Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767 (1994), the tie between the sanction and criminal conduct was only one of several factors that led the Supreme Court to conclude that the sanction was punitive. See id. at 780-83. Elsewhere, the Court has found such a link insufficient to establish unconstitutionality. See United States v. One Assortment of 89 Firearms, 465 U.S. 354, 365-66 (1984); Ward, 448 U.S. at 250.[30/]

29/ Hawker establishes that it is permissible to use a conviction as conclusive evidence that a sanction should apply, contrary to plaintiff's suggestion that the conviction may be used only as evidence in a subsequent proceeding.

30/ It bears noting that application of the CT-SORA is not conditioned on scienter or a finding of criminal culpability. The CT-SORA applies not only to people who plead guilty to a covered offense or are convicted after trial, but also to people who plea nolo contendere or are found not guilty by reason of mental disease or defect. See C.G.S. §§ 54-250(1); 54-251; 54-252; 54-253; see also Hendricks, 521 U.S. at 362 (finding significant the fact that people absolved of criminal culpability were still subject to the statute).

Excessiveness Plaintiff's argument that Internet dissemination is excessive relative to the goals of public safety and assisting law enforcement has some force. Connecticut's web site makes more information available to more people than is necessary to achieve its public safety and law enforcement goals.[31/] Because Connecticut does not conduct an individualized assessment of each registrant, the web site conveys information about people who present either no risk or only a low risk of reoffending. Moreover, because the Internet is a global medium, the web site makes information available to millions of people who will never come to the state or otherwise come into contact with a registrant. As a result, Connecticut's approach is significantly different from the "occasionally imprecise targeting" that Doe ascribed to the New York statute. See Doe, 120 F.3d at 1282.

Nevertheless, I am not convinced that Connecticut's use of the Internet to disseminate registry data makes the CT-SORA punitive in fact. There can be no doubt that Internet availability or registry information is rationally related to the goals of public safety and law enforcement. See Fedemeer v. Haun, 227 F.3d 1244, 1253 (10th Cir. 2000). Indeed, use of the Internet is the most efficient means of making the information available to residents of

31/ Defendants do not dispute that their web sife also exceeds the availability requirements of the federal statute, which mandate that information be released only "where it is necessary to protect the public concerning a specific person." 42 U.S.C. § 14071(e)(2).

the state, and it will become more efficient as Internet accessibility increases over time. Because use of the Internet furthers these nonpunitive purposes, this feature of the CT-SORA is insufficient to render the statute punitive in fact. See United States v. Ursery, 518 U.S. 267, 290 (1996) ("Most significant is that [the challenged statutes], while perhaps having certain punitive aspects, serve important nonpunitive goals."); E.B. v. Verniero, 119 F.3d 1077, 1097 (3d Cir. 1997) ("The relevant issue is whether [the notification provisions] are reasonably related to a legitimate goal.").

Plaintiff contends that Connecticut has an obligation to more closely tailor its notification system to the statute's regulatory purposes, relying principally on Femedeer v. Haun, 35 F.Supp. 2d 852 (D.Utah 1999), which addressed a Utah web site providing Internet access to that state's registry.[32/] The district court's decision in Femedeer has been reversed since plaintiff filed his memorandum. See Femedeer v. Haun, 227 F.3d 1244 (10th Cir. 2000). Rejecting arguments very similar to those plaintiff makes here, the Tenth Circuit noted that "the district court [had] failed to consider . . . that . . . . the farther removed one is from a sex offenders community and from Utah generally, the less likely one will be to have an interest in accessing" the Utah registry. Id. at 1253. The Tenth Circuit also accepted a significant degree of imprecision in Utah's system, declining to require a more rigorous risk assessment mechanism. See id. ("[A] statute is not necessarily excessive . . . simply because a state has perhaps not achieved a perfect fit between ends and means.").

Other Factors None of the other Mendoza-Martinez factors supports a finding that the CT-SORA is punitive. The burdens of registration and ongoing address verification are not the type of affirmative disability or restraint

32/ Plaintiff's invocation of "other contexts" in which the Supreme Court has required that a sanction be more closely tailored to an individual's dangerousness is unpersuasive. See Pl.'s Mem. At 36. Each of the cases plaintiff cites involved physical detention or confinement

suggestive of a punitive sanction. See Cutshall, 193 F.3d at 474 ("The first [Mendoza-Martinez] factor, an affirmative disability or restraint, is some sanction approaching the infamous punishment of imprisonment." (citation and internal quotation omitted)); cf. Hudson, 522 U.S. at 104 (rejecting petitioners affirmative disability argument as nothing approaching the 'infamous punishment' of imprisonment" (internal quotation omitted)). As Doe pointed out, the Supreme Court has upheld civil sanctions with burdens much more onerous that those at issue here. Doe, 120 F.3d at 1279 (citing, inter alia, Hendricks v. Kansas, 521 U.S. 346 (1997) (upholding involuntary civil commitment sanction against an Ex Post Facto Clause challenge); see also Seling v. Young, 121 S.Ct. 727 (2001) (rejecting an "as applied" challenge to Washington's civil commitment statute).

Also, contrary to plaintiff's suggestion, "the fact that notification serves to deter sex offenders, both specifically and generally, from committing crimes in the future is not indicative of punitiveness." Doe, 120 F.3d at 1283; see also Hudson, 522 U.S. at 105 ("To hold that the mere presence of a deterrent purpose renders . . . sanctions 'criminal' for double jeopardy purposes would severely undermine the Government's ability to engage in effective regulation . . . .").

Aggregate assessment Only two of the Mendoza-Martinez factors arguably indicate a punitive effect: the tie to criminal conduct and the excessiveness of the sanction relative to nonpunitive purposes. Neither one by itself is sufficient to overcome the legislature's nonpunitive intent. See Hudson, 522 U.S. at 101 (rejecting the Supreme Court's apparent prior elevation of the excessiveness factor to dispositive status); One Assortment of 89 Firearms, 465 U.S. at 365-66 (holding that a punitive indication from the tie-to-criminal-conduct factor does not alone establish the necessary "clearest proof"); Ward, 448 U.S. at 249-50 (same). Nor does the combined effect of these two factors suffice to establish by the clearest proof that the law is punitive in fact. Accordingly, defendants'

motion for summary judgment on the ex post facto claim is granted.

Conclusion

In accordance with the foregoing, plaintiff's motion for summary judgment on the due process claim is granted and his motion as to the ex post facto claim is denied. Defendants' cross-motion for summary judgment as to the stigma aspect of the due process claim is denied and their cross-motion as to the ex post facto claim is granted. The ex post facto claim is dismissed.

So ordered.

Dated at Hartford, Connecticut this 31st day of March 2001.

Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN DOE,	:	
Plaintiff,	:	
	:	CASE NO. 3:99CV314 (RNC)
V.	:	
	:	
DR. HENRY LEE,	:	
ET AL.,	:	
Defendants.	:	

RULING AND ORDER GRANTING PERMANENT INJUNCTION

For reasons more fully stated in a ruling and order on cross-motions for summary judgment date March 31, 2001, the Court has determined that public disclosure and dissemination of plaintiff's inclusion in the sex offender registry maintained by the defendants pursuant to the Connecticut sex offender registry act, Connecticut General Statutes §§ 54-250 et. seq. (the "Registry" and the "Act") violates plaintiff's rights under the Due Process Clause of the Fourteenth Amendment. Plaintiff has been included in the registry, not because he has been determined to pose a threat to public safety, but solely because he has been convicted of one of the numerous offenses enumerated in the Act. Plaintiff has a liberty interest in not being falsely labeled a dangerous sex offender -- a label inherent in his inclusion in the undifferentiated registry. Defendants have deprived him of that interest without providing him notice and an opportunity to be heard on the question whether he is dangerous.

The Court has granted plaintiff's motion to certify a class of all persons who are subject to the registration and public disclosure requirements of the Act without notice and an opportunity to be heard on the question whether they are dangerous (the "due process class"). Class certification is appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure because the requirements of numerosity, commonality, typicality, and adequacy of representation are

satisfied and defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

Accordingly, it is hereby ordered:

Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this order, are permanently enjoined from:

1) disclosure or disseminating to the public, either in printed or electronic form (a) the Registry or (b) Registry information concerning a member of the due process class if the information identifies the class member as being included in the Registry; and,

2) identifying any member of the due process class as being included in the Registry;

provided that nothing in this order shall:

1) impair access to the Registry by law enforcement agencies and officers, including but not limited to the Connecticut Department of Correction, Board of Pardons, Board of Parole, Court Support Services Division, and Division of Criminal Justice;

2) preclude law enforcement agencies and officers carrying out official duties from using information contained in the Registry in specific criminal investigations and prosecutions, so long as members of the due process class are not described to the public as being included in the Registry;

3) preclude law enforcement agencies and officers carrying out official duties from disclosing or disseminating to the public information necessary to protect the public concerning a specific

person, so long as members of the due process class are not described to the public as being included in the Registry; or

4) affect the public's ability to obtain individual criminal conviction history records pursuant to Connecticut General Statutes Sections 1-210 et seq. and 29-11 et seq.

Defendants are directed to serve a copy of this order on each local police department, law enforcement agency, or other state or local entity to which they have transmitted the Registry or Registry information. Each such department, agency, or entity is bound by this order.

Pursuant to this order, but without limitation of it, defendants shall immediately take down the Registry website and cease making publicly available the Registry information maintained pursuant to C.G.S. § 54-258(a)(1) at the Department of Public Safety and at local police departments and state police troops.

This order is a statement of federal law that supersedes any state law to the contrary, including without limitation the Connecticut Freedom of Information Act.

So ordered.

Dated at Hartford, Connecticut, this 17th day of May 2001.

Robert N. Chatigny
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOHN DOE,	:	NO. 3:99CV314 (RNC)
Plaintiff	:	
	:	
V.	:	
	:	HARTFORD,
PUBLIC SAFETY,	:	CONNECTICUT
Defendant	:	MAY 18, 2001

TELEPHONE CONFERENCE

BEFORE:
HON. ROBERT N. CHATIGNY, U.S.D.J.

APPEARANCES:

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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ASSISTANT AG
HENRI ALEXANDRE, ASSISTANT AG
MAURA FITZGERALD, ASSISTANT AG
GREG D'AURIA, ASSOCIATE AG
CAROLYN QUERIJERO, DEPUTY AG

Darlene A. Warner, RDR-CRR
Official Court Reporter

9:00 A.M.

THE COURT: Good morning. Would you please state your appearances for the record starting with plaintiff's counsel.

MS. SADIN: Yes, sir, Shelley Sadin appearing for John Doe, Mr. Tegeler is not available this morning, sir.

THE COURT: Thank you.

MS. CHAPPLE: Barbara Chapple, Assistant Attorney General for the defense. And with me is Assistant Attorney General Greg D'Auria, Deputy Attorney General Carolyn Querijero, Henri Alexandre, Assistant Attorney General, and Maura Fitzgerald.

THE COURT: I wanted to speak with you first thing this morning if possible to attend to the matters that need to be addressed in the Doe case. I know that we had spoken about doing something around midday today or perhaps somewhat later than that. However, in light of the correspondence that I received late yesterday from both sides, it seemed to me best, indeed, absolutely necessary, to proceed at the earliest opportunity. Accordingly, I appreciate your being available at this hour.

The plaintiff's submission tells me that the defendants have said they would like additional time to consider the order that has been proposed by the plaintiff and to make additional comments. Is there anything more that the defendants would like to say.

MS. CHAPPLE: Not at this time, Your Honor. I think any comments that we've had we've already included or we've conveyed them to the plaintiffs and they've been included in the proposed order. We don't intend to submit anything further.

THE COURT: All right, fine.

MS. SADIN: If Your Honor please, one thing that occurred to me that I think we need to attend to, and that is that the defendants have already disclosed and provided copies of the registry to agencies and officers and I think we need to -- I don't think that this order really covers that.

For example, when Your Honor mentioned the other day that one of the ways that the -- that we need to address the disclosure issue is to take the registry off the desks at

the police department. I'm not sure that the way we've worded the order so far accomplishes that.

THE COURT: We've addressed that.

MS. SADIN: I think we need to add a clause.

THE COURT: We've done that. And before we're through, I'll read what we have and I'll make this available to you so that you can pick it up.

MS. SADIN: Okay.

THE COURT: All right?

I know the Attorney General's office is just around the corner and it's very easy for the defendants to get access to this order. It may not be quite as easy for you, but it will be available for you as soon as we're off the phone.

MS. CHAPPLE: Your Honor, we'd be happy to pick up a copy and fax it to Shelley.

MS. SADIN: That would be great.

THE COURT: Thank you.

I looked at a transcript of our discussion on the 15th and I note that when I referred to the motion for class certification, I said that I intended to grant it. And to clarify any ambiguity in that regard, I will say for the record now that the motion has been granted.

As I told you in court, I'm persuaded that the plaintiff has satisfied all the requirements for a class treatment. You will be receiving a short statement from me in the nature of a brief memorandum of opinion on the class certification issue, but I think the basis for granting the motion is apparent to us all.

With regard to the proposed order, I have a question that I would like you to address. The proposed order talks about disclosing the registry or information. And I think I have a clear idea of what we are trying to do with this order and I'm not sure that the language that you propose is ideal.

MS. SADIN: That wouldn't surprise me.

THE COURT: We plainly do not want the registry, as such, being made available to the public, whether electronically, via the internet, or in book form at the police stations. The registry, as such, may not be publicly disclosed or disseminated.

With regard to registry information, that is to say information contained in the registry bearing on any particular registrant, it's my understanding that the

information may be disclosed provided the registrant is not identified as being in the registry.

MS. SADIN: Correct.

THE COURT: Okay. Then with that clarification, I think I can modify the language and hopefully make it a little bit simpler and clearer for people.

What I propose to say is as follows: Defendants are permanently enjoined from disclosing or disseminating to the public, either in printed or electronic form, the registry or registry information concerning a member of the due process class if the registry or registry information contains the name or other identifying information of the class member and identifying any member of the due process class as being included in the registry.

I realize it may be somewhat difficult for you to absorb that and reflect on its adequacy, but the intent is that the registry, as such, could not be publicly disclosed or disseminated and registry information could not be publicly disclosed or disseminated if it contained the name or other identifying information of the class member. Do you have any problem with that?

MS. SADIN: No. From the plaintiff's side, Your Honor, that sounds okay.

MS. CHAPPLE: I guess our concern, Your Honor, is that the order doesn't enjoin the Department of Public Safety from disclosing information in the Bureau of Identification of criminal history information that is available from sources other than the registry. And I think that was the agreement that both sides had. That that information, criminal history information, would still be available as long as it's not identified as being from the registry.

THE COURT: The order goes on. It says, "Provided nothing in this order will impair access to the registry by law enforcement agencies and officers," and they're specified, "to preclude law enforcement agencies and officers carrying out official duties from using information contained in the registry in specific criminal investigations and prosecutions so long as member of the due process class are not described to the public as being included in the registry."

Three: "Preclude law enforcement agencies and officers carrying out official duties from disclosure or

disseminating to the public information necessary to protect the public concerning a specific person so long as members of the due process class are not described to the public as being included in the registry."

Or, four -- and this is the point you mentioned. "Affect the public's ability to obtain individual criminal conviction history records pursuant to the applicable statutes."

The order would go on to require that defendants serve a copy of it on each local police department, law enforcement agency or other state or local entity to which it has transmitted registry information. And the order notes that each such department agency or entity is bound.

The order continues. "Pursuant to this order but without limitation of it, defendant shall immediately take down the registry website and cease making publicly available the registry or registry information maintained pursuant to the statute at local police department and state police troops."

All right?

MS. CHAPPLE: Your Honor, just for the record, I guess I'll state the obvious, which is we don't represent the municipal police departments. We can't -- I mean, we certainly will comply with Your Honor's order, but we can't make any representations as what their reaction will be to the order; whether they feel that the Court has jurisdiction to order them not to disclose this information. But we certainly will comply with the order, make them aware of the order.

THE COURT: Well, if you think that there might be some potential difficulty in that regard, it might be in their interest if somebody were to tell them that if they have notice of this order and they violate it, they might have a contempt problem on their hands and they probably shouldn't risk that without at least checking with counsel beforehand.

MS. CHAPPLE: Hopefully they would do that, Your Honor.

THE COURT: I would hope so.

I know that the defendants moved for a stay in papers that they submitted to us. And I'm not going to stay the order to give the defendants an opportunity to seek a

stay from the Court of Appeals. Ordinarily, I would do that in most cases if only to avoid imposing on counsel and the judges of the Court of Appeals unnecessarily.

However, in this situation, I think that I am faced with an extraordinary circumstance permitting no say.

What am I referring to? The correspondence that I received late yesterday tells me that a local television station has made a Freedom of Information Act request seeking a copy of the registry. I think that were I to grant a stay of my order to permit the defendants to seek a stay from the Court of Appeals, the freedom of information act request would complicate this situation very much for all concerned. And I think it's better to try to maintain the status quo, so-to-speak.

It's my understanding that the website can be taken down with a key stroke or two. And if the Court of Appeals should decide to stay my order or reverse it, the website can be reinstated with a key stroke or two.

MS. QUERIJERO: Your Honor, Carolyn Querijero, Deputy Attorney General. Can I just speak for a moment to the stay order?

The Attorney General isn't available at this moment, as I think you've been informed. He will be in about 15 minutes.

But we would really ask that you reconsider that and just enter a stay until Monday or make this order effective Monday. Your concerns about the Freedom of Information request, I think I can provide some assurance to you, under the Connecticut law, we have up to four business days to respond to the request. And we could certainly represent to you and assure you that we would not respond to it before Tuesday morning. So if we could have a stay until Monday or have the order take effect on Monday to enable us to get our State papers ready and file them with the Second Circuit, we would -- you know, we would ask for that.

THE COURT: All right. I have given careful consideration to this matter. And I don't think a stay is warranted. The defendants have made statements to me and to the public that the decision is plainly wrong and exceedingly dangerous. I think those statements are hyperbole at best. I have thought carefully about the

potential consequences of this order. And I see no danger to the public whatsoever.

If, as the Attorney General has been telling people, the order might imperil school children because a sex offender might move in next door without notice, then I would urge the Attorney General to tell the people involved in law enforcement to be more alert. They are free to continue to check the registry on a daily, indeed hourly, basis. And if they see that somebody has moved in across the street from a school, nothing in the order prevents them from warning everyone in that school Nothing prevents them from going to that offender and making plain the law enforcement interest and seeing to it that those children are protected.

What the order prevents is public disclosure of that individual's inclusion in the registry and his registry information identified as such.

Consequently, I think you'll see that I give little or no weight to the in terrorem arguments that have been made to me and broadcast widely to the public.

In fact, as a result of all that, your arguments lack credibility with me. And for that reason, too, I deny the request.

Is there anything further?

MS. QUERIJERO: No. Just to note our objection for the record, Your Honor.

MS. CHAPPLE: Your Honor, two brief matters.

One is that I'm not so sure that the website can be taken down as easily as Your Honor has suggested. The State Police in anticipation of the order has begun preparing. We will notify the Court soon when they expect to be able to have it down, especially if they anticipate any delay. But we've been led to believe that it's not as simple as Your Honor has suggested.

THE COURT: Well, I don't claim to be an expert, but I have advisors who seem to be knowledgeable in the area and they tell me that it can be done quickly and inexpensively. If you have any problems, I would appreciate learning about it and I would urge you to please err on the side of informing me because I am concerned that the order be complied with, all right?

MS. CHAPPLE: Yes, Your Honor.

I was wondering if you could tell us the date when the motion for class certification was granted. If it was the 15th or some time after that.

THE COURT: We can treat it granted as of today on the record in this conference.

MS. CHAPPLE: Thank you, Your Honor.

THE COURT: Anything further?

MS. SADIN: No, sir. Just if the defendant would also keep the plaintiffs appraised of any difficulties with the website. My concern is that everybody's out there trying to -- sort of like the Napster case -- download it right away.

THE COURT: All right.

MS. SADIN: In anticipation of an order. So the quicker it comes down, I think that's a very important point.

MS. CHAPPLE: We will represent to the Court that we'll advise the Department of Public Safety to make every effort to get it down immediately, as soon as it's possible.

THE COURT: All right. Thank you all.

MS. SADIN: Thank you, sir.

REGISTRATION OF SEXUAL OFFENDERS

Sec. 54-250. Definitions. For the purposes of sections 54-102g and 54-250 to 54-259, inclusive:

(1) "Conviction" means a judgment entered by a court upon a plea of guilty, a plea of nolo contendere or a finding of guilty by a jury or the court notwithstanding any pending appeal or habeas corpus proceeding arising from such judgment.

(2) "Criminal offense against a victim who is a minor" means (A) a violation of subdivision (2) of Section 53-21, subdivision (2) of subsection (a) of section 53a-70, subdivision (2), (4) or (8) of subsection (a) of section 53a-71, subdivision (2) of subsection (a) of section 53a-72a, subdivision (2) of subsection (a) of section 53a-86, subdivision (2) of subsection (a) of section 53a-87, section 53a-196a, 53a-196b, 53a-196c or 53a-196d, (B) a violation of section 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-96 or 53a-186, provided the court makes a finding that, at the time of the offense, the victim was under eighteen years of age, (C) a violation of any of the offenses specified in subparagraph (A) or (B) of this subdivision for which a person is criminally liable under section 53a-8, 53a-48 or 53a-49, or (D) a violation of any predecessor statute to any offense specified in subparagraph (A), (B) or (C) of this subdivision the essential elements of which are substantially the same as said offense.

(3) "Identifying factors" means fingerprints, a photographic image, and a description of any other identifying characteristics as may be required by the Commissioner of Public Safety. The commissioner shall also require a sample of the registrant's blood taken for DNA (deoxyribonucleic acid) analysis, unless such sample has been previously obtained in accordance with section 54-102g.

(4) "Mental abnormality" means a congenital or acquired conditions of a person that affects the emotional or volitional capacity of the person in a manner that

predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(5) "Nonviolent sexual offense" means a violation of section 53a-73a.

(6) "Not guilty by reason of mental disease or defect" means a finding by a court or jury of not guilty by reason of mental disease or defect pursuant to section 53a-13 notwithstanding any pending appeal or habeas corpus proceeding arising from such finding.

(7) "Personality disorder" means a condition as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.

(8) "Registrant" means a person required to register under section 54-251, 54-252, 54-253 or 54-254.

(9) "Registry" means a central record system in this state, any other state or the federal government that receives, maintains and disseminates information on persons convicted or found not guilty by reason of mental disease or defect of criminal offenses against victims who are minors, nonviolent sexual offenses, sexually violent offenses and felonies found by the sentencing court to have been committed for a sexual purpose.

(10) "Release into the community" means, with respect to a conviction or a finding of not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor, a nonviolent sexual offense, a sexually violent offense or a felony found by the sentencing court to have been committed for a sexual purpose, (A) any release by a court after such conviction or finding of not guilty by reason of mental disease or defect, a sentence of probation or any other sentence under section 53a-28 that does not result in the offender's immediate placement in the custody of the Commissioner of Correction; (B) release from a correctional facility at the discretion of the Board of

Parole, by the Department of Correction to a program authorized by section 18-100c or upon completion of the maximum term or terms of the offender's sentence or sentences, or to the supervision of the office of Adult Probation in accordance with the terms of the offender's sentence; or (C) release from a hospital for mental illness or a facility for persons with mental retardation by the Psychiatric Security Review Board on conditional release pursuant to section 17a-588 or upon termination of commitment to the Psychiatric Security Review Board.

(11) "sexually violent offense" means (A) a violation of section 53a-70, except subdivision (2) of subsection (a) of said section, 53a-70a, 53a-70b, 53a-71, except subdivision (1), (4) or (8) of subsection (a) of said section, 53a-72a, except subdivision (2) of subsection (a) of said section, or 53a-72b, or of section 53a-92 or 53a-92a, provided the court makes a finding that the offense was committed with intent to sexually violate or abuse the victim, (B) a violation of any of the offenses specified in subparagraph (A) of this subdivision for which a person is criminally liable under section 53a-8, 53a-48 or 53a-49, or (C) a violation of any predecessor statute to any of the offenses specified in subparagraph (a) or (B) of this subdivision the essential elements of which are substantially the same as said offense.

(12) "Sexual purpose" means that a purpose of the defendant in committing the felony was to engage in sexual contact or sexual intercourse with another person without that person's consent. A sexual purpose need not be the sole purpose of the commission of the felony. The sexual purpose may arise at any time in the course of the commission of the felony.

Sec. 54-251. Registration of person who has committed a criminal offense against a victim who is a minor or a nonviolent sexual offense. (a) Any person who has been convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor or a nonviolent sexual offense, and is released into the community on or after October 1, 1998, shall, within three days following such release, and whether or not such person's place of residence is in this state, register such person's name, identifying factors, criminal history record and residence address with the Commissioner of Public Safety, on such forms and in such locations as the commissioner shall direct, and shall maintain such registration for ten years except that any person who has one or more prior convictions of any such offense or who is convicted of a violation of subdivision (2) of subsection (a) of section 53a-70 shall maintain such registration for life. Prior to accepting a plea of guilty or nolo contendere from a person with respect to a criminal offense against a victim who is a minor or a nonviolent sexual offense, the court shall (1) inform the person that the entry of a finding of guilty after section 53a-70 shall maintain such registration for life. Prior to accepting a plea of guilty or nolo contendere from a person with respect to a criminal offense against a victim who is a minor or a nonviolent sexual offense, the court shall (1) inform the person that the entry of a finding of guilty after acceptance of the plea will subject the person to the registration requirements of this section, and (2) determine that the person fully understands the consequences of the plea. If such person changes such person's address such person shall, within five days, register the new address in writing with the Commissioner of Public Safety, and, if the new address is in another state, such person shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders. If any person who is subject to registration under this section regularly travels into or within another state or temporarily resides in another state for purposes including, but not limited to employment or schooling, such person shall notify the Commissioner of Public Safety and shall also register with an appropriate agency in that state provided that state has a registration requirement for such

offenders. During such period of registration, each registrant shall complete and return forms mailed to such registrant to verify such registrant's residence address and shall submit to the retaking of a photographic image upon request of the Commissioner of Public Safety.

(b) Notwithstanding the provisions of subsection (a) of this section, the court may exempt any person who has been convicted or found not guilty by reason of mental disease or defect of a violation of subdivision (1) of subsection (a) of section 53a-71 from the registration requirements of this section if the court finds that such person was under nineteen years of age at the time of the offense and that registration is not required for public safety.

(c) Notwithstanding the provisions of subsection (a) of this section, the court may exempt any person who has been convicted or found not guilty by reason of mental disease or defect of a violation of subdivision (2) of subsection (a) of section 53a-73a from the registration requirements of this section if the court finds that registration is not required for public safety.

(d) Any person who violates the provisions of this section shall be guilty of a class D felony.

Sec. 54-252. Registration of person who has committed a sexually violent offense.

(a) Any person who has been convicted or found not guilty by reason of mental disease or defect of a sexually violent offense, and (1) is released into the community on or after October 1, 1988, and prior to October 1, 1998, and resides in this state, shall, on October 1, 1998, or within three days of residing in this state, whichever is later, or (2) is released into the community on or after October 1, 1998, shall, within three days following such release, register such person's name, identifying factors, criminal history record, documentation of any treatment received for mental abnormality or personality disorder, and residence address with the Commissioner of Public Safety on such forms and in such locations as said commissioner shall direct, and shall maintain such registration for life. Prior to accepting a plea of guilty or nolo contendere from a person with respect to a sexually violent offense, the court shall (A) inform the person that the entry of a finding of guilty after acceptance of the plea will subject the person to the registration requirements of this section, and (B) determine that the person fully understands the consequences of the plea. If such person changes such person's address such person shall, within five days, register the new address in writing with the Commissioner of Public Safety, and, if the new address is in another requirements of this section, and (B) determine that the person fully understands the consequences of the plea. If such person changes such person's address such person shall, within five days, register the new address in writing with the Commissioner of Public Safety, and, if the new address is in another state, such person shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders. If any person who is subject to registration under this section regularly travels into or within another

state or temporarily resides in another state for purposes including, but not limited to employment or schooling, such person shall notify the Commissioner of Public Safety and shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders. During such period of registration, each registrant shall complete and return forms mailed to such registrant to verify such registrant's residence address and shall submit to the retaking of a photographic image upon request of the Commissioner of Public Safety.

(b) Any person who has been subject to the registration requirements of section 54-102r of the general statutes, revised to January 1, 1997, as amended by section 1 of public act 97-183, shall, not later than three working days after October 1, 1998, register under this section and thereafter comply with the provisions of sections 54-102g and 54-250 to 54-259, inclusive.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, during the initial registration period following October 1, 1998, the Commissioner of Public Safety may phase in completion of the registration procedure for persons released into the community prior to said date over the first three months following said date, and no such person shall be prosecuted for failure to register under this section during those three months provided such person complies with the directives of said commissioner regarding registration procedures.

(d) Any person who violates the provisions of this section shall be guilty of a class D felony.

Section 54-253. Registration of person who has committed a sexual offense in another jurisdiction. (a) Any person who has been convicted or found not guilty by reason of mental disease or defect in any other state, in a federal or military court or in any foreign jurisdiction of any crime, the essential elements of which are substantially the same as any of the crimes specified in subdivisions (2), (5) and (11) of section 54-250 and who resides in this state on and after October 1, 1998, shall, within ten days of residing in this state, register with the Commissioner of Public Safety in the same manner as if such person had been convicted or found not guilty by reason of mental disease or defect of such crime in this state, except that for purposes of determining the ten-year period of registration under section 54-251 such person shall be deemed to have initially registered on the date of such person's release into the community in such other state, federal or military system or foreign jurisdiction.

(b) Any person not a resident of this state who is registered as a sexual offender under the laws of any other state and who regularly travels into or within this state or temporarily resides in this state for purposes including, but not limited to employment or schooling shall, within three days after the offender under the laws of any other state and who regularly travels into or within this state or temporarily resides in this state for purposes including, but not limited to employment or schooling shall, within three days after the commencement of such travel or residence in this state, register such person's name, identifying factors, criminal history record, locations visited on a recurring basis or residence address, if any, in this state, and residence address in such person's home state with the Commissioner of Public Safety on such forms and in such locations as said commissioner shall direct and shall maintain such registration until such travel or residence terminates or until

such person is released from registration as a sexual offender in such other state. If such person terminates such person's travel or residence in this state or changes such person's address in this state such person shall, within five days, provide notice in writing to the Commissioner of Public Safety.

(c) Any person who violates the provisions of this section shall be guilty of a class D felony.

Sec. 54-254. Registration of person who has committed a felony for a sexual purpose. (a) Any person who has been convicted or found not guilty by reason of mental disease or defect in this state on or after October 1, 1998, of any felony that the court finds was committed for a sexual purpose, may be required by the court upon release into the community to register such person's name, identifying factors, criminal history record and residence address with the Commissioner of Public Safety, on such forms and in such locations as the commissioner shall direct, and to maintain such registration for ten years. If the court finds that a person has committed a felony for a sexual purpose and intends to require such person to register under this section, prior to accepting a plea of guilty or nolo contendere from such person with respect to such felony, the court shall (1) inform the person that the entry of a finding of guilty after acceptance of the plea will subject the person to the registration requirements of this section, and (2) determine that the person fully understands the consequences of the plea. If such person changes such person's address such person shall, within five days, register the new address in writing with the Commissioner of Public Safety, and, if the new address is in another state, such person shall also register with an appropriate agency in fully understands the consequences of the plea. If such person changes such person's address such person shall, within five days, register the new address in writing with the Commissioner of Public Safety, and, if the new address is in another state, such person shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders. If any person who is subject to registration under this section regularly travels into or within another state or temporarily resides in another state for purposes including, but not limited to employment or schooling, such person shall notify the Commissioner of Public Safety and shall also register with

an appropriate agency in that state, provided that state has a registration requirement for such offenders. During such period of registration, each registrant shall complete and return forms mailed to such registrant to verify such registrant's residence address and shall submit to the retaking of a photographic image upon request of the Commissioner of Public Safety.

(b) Any person who violates the provisions of this section shall be guilty of a class D felony.

Sec. 54-255. Restriction on dissemination of registration information for certain offenders. (a) Upon the conviction or finding of not guilty by reason of mental disease or defect of any person for a violation of section 53a-70b, the court may order the Department of Public Safety to restrict the dissemination of the registration information to law enforcement purposes only and to not make such information available for public access, provided the court finds that dissemination of the registration information is not required for public safety and that publication of the registration information would be likely to reveal the identity of the victim within the community where the victim resides. The court shall remove the restriction on the dissemination of such registration information if, at any time, the court finds that public safety requires that such person's registration information be made available to the public or that a change of circumstances makes publication of such registration information no longer likely to reveal the identity of the victim within the community where the victim resides. Prior to ordering or removing the restriction on the such person's registration information be made available to the public or that a change of circumstances makes publication of such registration information no longer likely to reveal the identity of the victim within the community where the victim resides. Prior to ordering or removing the restriction on the dissemination of such person's registration information, the court shall consider any information or statements provided by the victim.

(b) Upon the conviction or finding of not guilty by reason of mental disease or defect of any person of a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in

section 46b-21, the court may order the Department of Public Safety to restrict the dissemination of the registration information to law enforcement purposes only and to not make such information available for public access, provided the court finds that dissemination of the registration information is not required for public safety and that publication of the registration information would be likely to reveal the identity of the victim within the community where the victim resides. The court shall remove the restriction on the dissemination of such registration information if, at any time, it finds that public safety requires that such person's registration information be made available to the public or that a change in circumstances makes publication of the registration information no longer likely to reveal the identity of the victim within the community where the victim resides.

(c) Any person who: (1) Has been convicted or found not guilty by reason of mental disease or defect of a violation of subdivision (1) of subsection (a) of section 53a-71 between October 1, 1988, and June 30, 1999, and was under nineteen years of age at the time of the offense; (2) has been convicted or found not guilty by reason of mental disease or defect of a violation of subdivision (2) of subsection (a) of section 53a-73a between October 1, 1988, and June 30, 1999; (3) has been convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, between October 1, 1988, and June 30, 1999, where the victim of such offense was, at the time of the offense, under eighteen years of age and related to such person within any of the degrees of kindred specified in section 46b-21; (4) has been convicted or found not guilty by reason of mental disease or defect of a violation of section 53a-70b between October 1, 1988, and June 30, 1999; or (5) has been convicted or found not

guilty by reason of mental disease or defect of any crime between October 1, 1988, and September 30, 1998, which requires registration under sections 54-250 to 54-259, inclusive, and (A) served no jail or prison time as a result of such conviction or finding of not guilty by reason of mental disease or defect, (B) has not been subsequently convicted or found not guilty by reason of mental disease or defect of any crime which would require registration under sections 54-250 to 54-259, inclusive, and (C) has registered with the Department of Public Safety in accordance with sections 54-250 to 54-259, inclusive; may petition the court to order the Department of Public Safety to restrict the dissemination of the registration information to law enforcement purposes only and to not make such information available for public access, provided the court finds that dissemination of the registration information is not required for public safety.

Sec. 54-256. Responsibilities of courts and agencies in registration process. Any court, the Commissioner of Correction or the Psychiatric Security Review Board, prior to releasing into the community any person convicted or found not guilty by reason of mental disease or defect of a criminal offense against a victim who is a minor, a nonviolent sexual offense, a sexually violent offense or a felony found by the sentencing court to have been committed for a sexual purpose, except a person being released unconditionally at the conclusion of such person's sentence or commitment, shall require as a condition of such release that such person complete the registration procedure established by the Commissioner of Public Safety under sections 54-251, 54-252 and 54-254. The court, the Commissioner of Correction or the Psychiatric Security Review Board, as the case may be, shall provide the person with a written summary of the person's obligations under sections 54-102g and 54-250 to 54-259, inclusive, and transmit the completed registration package to the Commissioner of Public Safety who shall enter the information into the registry established under section 54-257. If a court transmits the completed registration package to the Commissioner of Public Safety with respect to a person released by the court, such package need not include identifying factors for such person. In the case of a person being released unconditionally who declines to complete the 54-257. If a court transmits the completed registration package to the Commissioner of Public Safety with respect to a person released by the court, such package need not include identifying factors for such person. In the case of a person being released unconditionally who declines to complete the registration package through the court or the releasing agency, the court or agency shall: (1) Except with respect to information that is not available to the public pursuant to court order, rule of court or any provision of the general statutes, provide to the

Commissioner of Public Safety the person's name, date of release into the community, anticipated residence address, if known, criminal history record, any known treatment history and any other relevant information; (2) inform the person that such person has an obligation to register within three days with the Commissioner of Public Safety for a period of ten years following the date of such person's release or for life, as the case may be, and that if such person changes such person's address such person shall within five days register the new address in writing with the Commissioner of Public Safety and, if the new address is in another state or if such person regularly travels into or within another state or temporarily resides in another state for purposes including, but not limited to employment or schooling, such person shall also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders; (3) provide the person with a written summary of the person's obligations under sections 54-102g and 54-250 to 54-259, inclusive, as explained to the person under subdivision (2) of this section; and (4) make a specific notation on the record maintained by that agency with respect to such person that the registration requirements were explained to such person and that such person was provided with a written summary of such person's obligations under sections 54-102g and 54-250 to 54-259, inclusive.

Sec. 54-257. Registry. Suspension of registration. Verification of address. (a) The Department of Public Safety shall, not later than January 1, 1999, establish and maintain a registry of all persons required to register under sections 54-251, 54-252, 54-253 and 54-254. The department shall, in cooperation with the Office of the Chief Court Administrator, the Department of Correction and the Psychiatric Security Review Board, develop appropriate forms for use by agencies and individuals to report registration information, including changes of address. Upon receipt of registration information, the department shall enter the information into the registry and notify the local police department or state police troop having jurisdiction where the registrant resides or plans to reside. If a registrant reports a residence in another state, the department shall notify the state police agency of that state or such other agency in that state that maintains registry information, if known. The department shall also transmit all registration information, conviction data, photographic images and fingerprints to the Federal Bureau of Investigation in such form as said bureau shall require for inclusion in a national registry.

(b) The Department of Public Safety may suspend the registration of any person registered under section 54-251, 54-252, 54-253 or 54-254 while such under civil commitment or residing outside this state. During the period that such registration is under suspension, the department is not required to verify the address of the registrant pursuant to subsection (c) of this section and may withdraw the registration information from public access. Upon the release of the registrant from incarceration or civil commitment or resumption of residency in this state by the registrant, the department shall reinstate the registration, redistribute the registration information in accordance with subsection (a) of this section and resume verifying the

address of the registrant in accordance with subsection (c) of this section. Suspension of registration shall not affect the date of expiration of the registration obligation of the registrant under section 54-251, 54-252 or 54-253.

(c) Except as provided in subsection (b) of this section, the Department of Public Safety shall verify the address of each registrant by mailing a nonforwardable verification form to the registrant at the registrant's last reported address. Such form shall require the registrant to sign a statement that the registrant continues to reside at the registrant's last reported address and return the form by mail by a date which is ten days after the date such form was mailed to the registrant. The form shall contain a statement that failure to return the form or providing false information is a violation of section 54-251, 54-252, 54-253 or 54-254, as the case may be. Each person required to register under section 54-251 or 54-254 shall have such person's address verified in such manner annually on the anniversary of such person's initial registration date. Each person required to register under section 54-252 shall have such person's address verified in such manner every ninety days after such person's initial registration date. Each person required to register under section 54-253 shall have such person's address verified in such manner either annually on the anniversary of such person's initial registration date or every ninety days after such person's initial registration date depending upon whether, after such initial registration, such person is subject to the requirements of section 54-251 or section 54-252, respectively. In the event that a registrant fails to return the address verification form, the Department of Public Safety shall notify the local police department or the state police troop having jurisdiction over the registrant's last reported address, and that agency shall apply for a warrant to be issued for the registrant's arrest under

section 54-251, 54-252, 54-253 or 54-254, as the case may be. The Department of Public Safety shall not verify the address of registrants whose last reported address was outside this state.

(d) The Department of Public Safety shall retake the photographic image of each registrant at least once every five years.

Sec. 54-258. Availability of registration information. Immunity. (a)(1) Notwithstanding any other provision of the general statutes, except subdivisions (3) and (4) of this subsection, the registry maintained by the Department of Public Safety shall be a public record and shall be accessible to the public during normal business hours. The Department of Public Safety shall make registry information available to the public through the Internet. Not less than once per calendar quarter, the Department of Public Safety shall issue notices to all print and electronic media in the state regarding the availability and means of accessing the registry. Each local police department and each state police troop shall keep a record of all registration information transmitted to it by the Department of Public Safety, and shall make such information accessible to the public during normal business hours.

(2) Any state agency, the Judicial Department, any state police troop or any local police department may, at its discretion, notify any government agency, private organization or individual of registration information when such agency, said department, such troop or such local police department, as the case may be, believes such notification is necessary to protect the public or any individual in any jurisdiction from any person who is subject to registration under private organization or individual of registration information when such agency, said department, such troop or such local police department, as the case may be, believes such notification is necessary to protect the public or any individual in any jurisdiction from any person who is subject to registration under section 54-251, 54-252, 54-253 or 54-254.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, state agencies, the Judicial Department, state police troops and local police

departments shall not disclose the identity of any victim of a crime committed by a registrant or treatment information provided to the registry pursuant to sections 54-102g and 54-250 to 54-259, inclusive, except to government agencies for bona fide law enforcement or security purposes.

(4) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, registration information the dissemination of which has been restricted by court order pursuant to section 54-255 and which is not otherwise subject to disclosure, shall not be a public record and shall be released only for law enforcement purposes until such restriction is removed by the court pursuant to said section.

(5) When any registrant completes the registrant's term of registration or is otherwise released from the obligation to register under section 54-251, 54-252, 54-253 or 54-254, the Department of Public Safety shall notify any state police troop or local police department having jurisdiction over the registrant's last reported residence address that the person is no longer a registrant, and the Department of Public Safety, state police troop and local police department shall remove the registrant's name and information from the registry.

(b) Neither the state nor any political subdivision of the state nor any officer or employee thereof, shall be held civilly liable to any registrant by reason of disclosure of any information regarding the registrant that is released or disclosed in accordance with subsection (a) of this section. The state and any political subdivision of the state and, except in cases of wanton, reckless or malicious conduct, any officer or employee thereof, shall be immune from liability for good faith conduct in carrying out the provisions of subdivision (2) of subsection (a) of this section.

Sec. 54-258a. Warning against wrongful use of registry information. Any agency of the state or any political subdivision thereof that provides public access to information contained in the registry shall post a warning that states: "Any person who uses information in this registry to injure, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution." Such warning shall be in a suitable size and location to ensure that it will be seen by any person accessing registry information.

Sec. 54-259. Sexual Offender Registration Committee. (a) There is established a Sexual Offender Registration Committee consisting of the following members or their designees: The Chief Court Administrator, the Chief State's Attorney, the Commissioner of Public Safety, the Commissioner of Correction, the Secretary of the Office of Policy and Management, the chairman of the Psychiatric Security Review Board, the chairman of the Board of Parole, the director of the Office of Adult Probation, the President of the Connecticut Police Chiefs Association and two persons appointed by the Governor, one of whom shall be involved in the delivery of services to victims of sexual assault and one of whom shall be involved in the delivery of services to victims of crime. The Chief Court Administrator shall serve as chairperson of the committee. The Office of Policy and Management shall, within available resources, provide staff resources to the committee.

(b) On or before January 15, 1999, the Sexual Offender Registration Committee shall submit a report to the Governor and the General Assembly. Such report shall make recommendations concerning the implementation of sections 54-102g and 54-250 to 54-259, inclusive, and shall address issues including (1) assuring interagency coordination to maximize the accuracy and timeliness of shall submit a report to the Governor and the General Assembly. Such report shall make recommendations concerning the implementation of sections 54-102g and 54-250 to 54-259, inclusive, and shall address issues including (1) assuring interagency coordination to maximize the accuracy and timeliness of information contained in the registry, (2) complying with other applicable state and federal laws and regulations, (3) establishing a procedure by which registrants may apply to the sentencing court, not sooner than ten years after initial registration, to be relieved of their obligation to register, (4) establishing a board of

experts in the behavior and treatment of sexual offenders, to examine such applicants and make recommendations to the court in accordance with section 54-255, (5) developing guidelines for the state police and municipal police departments that shall set forth the circumstances in which individuals, private organizations and government agencies in their respective jurisdictions should be directly notified that a person subject to registration under sections 54-102g and 54-250 to 54-259, inclusive, is residing near their locations, and (6) any other fiscal, legislative and programmatic matters which affect the successful implementation of the registry.

Sec. 54-260. (Formerly Sec. 54-102s). Notification of change of address of sexual offenders on parole or probation. (a) For the purposes of this section, "sexual offender" means any person convicted of a violation of subdivision (2) of section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b committed on or after October 1, 1995.

(b) Any sexual offender who is released from a correctional institution on parole or who is sentenced to a period of probation shall, during the period of such parole or probation and as a condition of such parole or probation, immediately notify his parole officer or probation officer, as the case may be, whenever he changes his residence address. Each parole officer or probation officer who is notified of such change of address shall notify the chief of police of the police department or resident state trooper for the municipality of the new address of the parolee or probationer and any other law enforcement official he deems appropriate.

(c) Nothing in this section shall be construed to prohibit a parole officer or probation officer acting in the performance of his duties and within the scope of his employment from disclosing any information concerning the parolee or probationer to any person whenever he deems such disclosure to be appropriate.

Sec. 54-261. Community response education program. (a) The Office of Adult Probation, in conjunction with state-wide experts in law enforcement, the treatment of sexual offenders and sexual assault victim services, shall, within available appropriations, develop a community response education program to be offered to neighborhoods and municipalities that have been notified pursuant to section 54-258 that a person who has registered under said section is or will be residing in that community.

(b) The purpose of such program shall be to assist neighborhoods, parents and children to learn how to better protect themselves from sexual abuse and sexual assault. The program shall develop educational materials and community information resources on prevention and risk reduction concerning sexual abuse and sexual assault and the enforcement of requirements concerning the registration and supervision of sexual offenders and the notification of communities where such offenders reside.

(c) The program may include the following:

(1) An initial community meeting following a community notification, sponsored by the Office of Adult Probation and held in conjunction with the chief of police, chief elected officials, the superintendent of schools and other municipal officials of the community, to discuss the implementation of the statutory requirements concerning the registration of a sexual offender and the notification of the community where such offender resides, to provide information on the crime or crimes involved and to provide information on how the offender will be monitored by the Office of Adult Probation and the specific conditions of probation applicable to the offender;

(2) Information on how and where concerned residents may report observed violations by an offender of the conditions of such offender's probation;

(3) Resources to educate families and children in the prevention and avoidance of sexual abuse and sexual assault and for parents seeking supportive methods for discussing relevant issues with their children;

(4) Resources on when and how a community may wish to establish a network of "Safe Houses" for neighborhood children to use when they seek safe shelter or the creation of a neighborhood block watch or crime watch;

(5) Resources for police departments and boards of education to use in consulting with parents on appropriate school-based classroom programs stressing safety, prevention and risk reduction and to use in developing educational programs for parents to discuss relevant issues with their children;

(6) Compilation and distribution of a list of child protective agencies, child guidance clinics and rape crisis centers for families seeking more in-depth counseling after a community notification has occurred.

(d) The Office of Adult Probation may apply for and receive grants from the federal government or any agency thereof or from any foundation, corporation, association or individual for purposes of the development of the community response education program under this section.

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(a) In general.

(1) State guidelines. The Attorney General shall establish guidelines for State programs that require--

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6); and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6).

(2) Determination of sexually violent predator status; waiver; alternative measures.

(A) In general. A determination of whether a person is a sexually violent predator for purposes of this section shall be made by a court after considering the recommendation of a board composed of experts in the behavior and treatment of sex offenders, victims' rights advocates, and representatives of law enforcement agencies.

(B) Waiver. The Attorney General may waive the requirements of subparagraph (A) if the Attorney General determines that the State has established alternative procedures or legal standards for designating a person as a sexually violent predator.

(C) Alternative measures. The Attorney General may also approve alternative measures of comparable or

greater effectiveness in protecting the public from unusually dangerous or recidivistic sexual offenders in lieu of the specific measures set forth in this section regarding sexually violent predators

(3) Definitions. For purposes of this section:

(A) The term "criminal offense against a victim who is a minor" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;
(ii) false imprisonment of a minor, except by a parent;
(iii) criminal sexual conduct toward a minor;
(iv) solicitation of a minor to engage in sexual conduct;
(v) use of a minor in a sexual performance;
(vi) solicitation of a minor to practice prostitution;
(vii) any conduct that by its nature is a sexual offense against a minor; or
(viii) an attempt to commit an offense described in any of clauses (i) through (vii), if the State--

(I) makes such an attempt a criminal offense; and
(II) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for the purposes of this section.

For purposes of this subparagraph conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(B) The term "sexually violent offense" means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the range of

offenses encompassed by aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

(C) The term "sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(D) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(E) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(F) The term "employed, carries on a vocation" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(G) The term "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary

school, trade, or professional institution, or institution of higher education.

(b) Registration requirement upon release, parole, supervised release, or probation. An approved State registration program established under this section shall contain the following elements:

(1) Duties of responsible officials.

(A) If a person who is required to register under this section is released from prison, or placed on parole, supervised release, or probation, a State prison officer, the court, or another responsible officer or official, shall--

(i) inform the person of the duty to register and obtain the information required for such registration;

(ii) inform the person that if the person changes residence address, the person shall report the change of address as provided by State law;

(iii) inform the person that if the person changes residence to another State, the person shall report the change of address as provided by State law and comply with any registration requirement in the new State of residence, and inform the person that the person must also register in a State where the person is employed, carries on a vocation, or is a student;

(iv) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(v) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(B) In addition to the requirements of subparagraph (A), for a person required to register under subparagraph (B) of subsection (a)(1), the State case may be, shall obtain

the name of the person, identifying factors, anticipated future residence, offense history, and documentation of any treatment received for the mental abnormality or personality disorder of the person.

(2) Transfer of information to State and FBI; participation in national sex offender registry.

(A) State reporting. State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(B) National reporting. A State shall participate in the national database established under section 170102(b) [42 USCS § 14072(b)] in accordance with guidelines issued by the Attorney General, including transmission of current address information and other information on registrants to the extent provided by the guidelines.

(3) Verification.

(A) For a person required to register under subparagraph (A) of subsection (a)(1), State procedures shall provide for verification of address at least annually.

(i)--(iv) [Deleted]

(B) The provisions of subparagraph (A) shall be applied to a person required to register under subparagraph (B) of subsection (a)(1), except that such person must verify the registration every 90 days after the date of the initial release or commencement of parole.

(4) Notification of local law enforcement agencies of changes in address. A change of address by a person required to register under this section shall be reported by the person in the manner provided by State law. State procedures shall ensure that the updated address information is promptly made available to a law enforcement agency having jurisdiction where the person will reside and entered into the appropriate State records or data system.

(5) Registration for change of address to another state. A person who has been convicted of an offense which requires registration under this section and who moves to another State, shall report the change of address to the responsible agency in the State the person is leaving, and shall comply with any registration requirement in the new State of residence. The procedures of the State the person is leaving shall ensure that notice is provided promptly to an agency responsible for registration in the new State, if that State requires registration.

(6) Length of registration. A person required to register under subsection (a)(1) shall continue to comply with this section, except during ensuing periods of incarceration, until--

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or

(B) for the life of that person if that person--

(i) has 1 or more prior convictions for an offense described in subsection(a)(1)(A); or

(ii) has been convicted of an aggravated offense described in subsection(a)(1)(A); or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2)

(7) Registration of out-of-State offenders, Federal offenders, persons sentenced by courts martial, and offenders crossing State borders. As provided in guidelines issued by the Attorney General, each State shall include in its registration program residents who were convicted in another State and shall ensure that procedures are in place to accept registration information from--

(A) residents who were convicted in another State, convicted of a Federal offense, or sentenced by a court martial; and

(B) nonresident offenders who have crossed into another State in order to work or attend school.

(c) Registration of offender crossing State border. Any person who is required under this section to register in the State in which such person resides shall also register in any State in which the person is employed, carries on a vocation, or is a student.

(d) Penalty. A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in any State in which the person has so failed.

(e) Release of information.

(1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

(2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released.

(f) Immunity for good faith conduct. Law enforcement agencies, employees of law enforcement agencies and independent contractors acting at the direction of such agencies, and State officials shall be immune from liability for good faith conduct under this section.

(g) Compliance.

(1) Compliance date. Each State shall have not more than 3 years from the date of enactment of this Act [enacted Sept. 13, 1994] in which to implement this section, except that the Attorney General may grant an additional 2 years to a State that is making good faith efforts to implement this section.

(2) Ineligibility for funds.

(A) A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765).

(B) Reallocation of funds. Any funds that are not allocated for failure to comply with this section shall be reallocated to States that comply with this section.

(h) Fingerprints. Each requirement to register under this section shall be deemed to also require the submission of a set of fingerprints of the person required to register, obtained in accordance with regulations prescribed by the Attorney General under section 170102(h) [42 USCS § 14072(h)].

(i) Grants to States for costs of compliance.

(1) Program authorized.

(A) In general. The Director of the Bureau of Justice Assistance (in this subsection referred to as the "Director") shall carry out a program, which shall be known as the "Sex Offender Management Assistance Program" (in this subsection referred to as the "SOMA program"), under which the Director shall award a grant to each eligible State to offset costs directly associated with complying with this section.

(B) Uses of funds. Each grant awarded under this subsection shall be--

(i) distributed directly to the State for distribution to State and local entities; and

(ii) used for training, salaries, equipment, materials, and other costs directly associated with complying with this section.

(2) Eligibility.

(A) Application. To be eligible to receive a grant under this subsection, the chief executive of a State shall, on an annual basis, submit to the Director an application (in such form and containing such information as the Director may reasonably require) assuring that--

(i) the State complies with (or made a good faith effort to comply with) this section; and

(ii) where applicable, the State has penalties comparable to or greater than Federal penalties for crimes listed in this section, except that the Director may waive the requirement of this clause if a State demonstrates an overriding need for assistance under this subsection.

(B) Regulations.

(i) In general. Not later than 90 days after the date of enactment of this subsection [enacted Oct. 30, 1998], the Director shall promulgate regulations to implement this subsection (including the information that must be included and the requirements that the States must meet) in submitting the applications required under this subsection. In allocating funds under this subsection, the Director may consider the annual number of sex offenders registered in each eligible State's monitoring and notification programs.

(ii) Certain training programs. Prior to implementing this subsection, the Director shall study the feasibility of incorporating into the SOMA program the activities of any technical assistance or training program established as a result of section 40152 of this Act [42 USCS § 13941]. In a case in which incorporating such activities into the SOMA program will eliminate duplication of efforts or administrative costs, the Director shall take administrative actions, as allowable, and make recommendations to Congress to incorporate such activities into the SOMA program prior to implementing the SOMA program.

(3) Authorization of appropriations. There is authorized to be appropriated to carry out this subsection, $ 25,000,000 for each of fiscal years 1999 and 2000.

42 U.S.C. 3756 Allocation and distribution of funds under formula grants (a) Subject to subsection (f), of the total amount appropriated for this part [42 USCS §§ 3750 et seq.] in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 511 of this title [42 USCS § 3761] shall be set aside for section 502 [42 USCS § 3752] and allocated to States as follows:

(1) $ 500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.

(b)(1) Each State which receives funds under subsection (a) of this section in a fiscal year shall distribute among units of local government, or combinations of units of local government, in such State for the purposes specified in section 501(b) [42 USCS § 3751(b)] that portion of such funds which bears the same ratio to the aggregate amount of such funds as the amount of funds expended by all units of local government for criminal justice in the preceding fiscal year bears to the aggregate amount of funds expended by the State and all units of local government in such State for criminal justice in such preceding fiscal year.

(2) In distributing funds received under this part among urban, rural, and suburban units of local government and combinations thereof, the State shall give priority to those jurisdictions with the greatest need.

(3) Any funds not distributed to units of local government under paragraph (2) shall be available for expenditure by the State involved.

(4) For purposes of determining the distribution of funds under paragraphs (1) and (2), the most accurate and complete data available for the fiscal year involved shall be used. If data for such fiscal year are not available, then the most accurate and complete data available for the most recent fiscal year preceding such fiscal year shall be used.

(c) No funds allocated to a State under subsection (a) or received by a State for distribution under subsection (b) may be distributed by the Director or by the State involved for any program other than a program contained in an approved application.

(d) If the Director determines, on the basis of information available during any fiscal year, that a portion of the funds allocated to a State for that fiscal year will not be required or that a State will be unable to qualify or receive funds under section 502 [42 USCS § 3752], or that a State chooses not to participate in the program established under such section, then such portion shall be awarded by the Director to urban, rural, and suburban units of local government or combinations thereof within such State giving priority to those jurisdictions with greatest need.

(e) Any funds allocated under subsection (a) or (f) that are not distributed under this section shall be available for obligation under subpart 2 [42 USCS §§ 3760 et seq.].

(f) (1) For any fiscal year beginning more than 2 years after the effective date of this subsection--

(A) 90 percent of the funds allocated under subsection (a) without regard to this subsection to a State

described in paragraph (2) shall be distributed by the Director to such State; and

(B) 10 percent of such funds shall be allocated equally among States that are not affected by the operation of subparagraph (A).

(2) Paragraph (1)(A) refers to a State that does not have in effect, and does not enforce, in such fiscal year, a law that requires the State at the request of the victim of a sexual act--

(A) to administer, to the defendant convicted under State law of such sexual act, a test to detect in such defendant the presence of the etiologic agent for acquired immune deficiency syndrome;

(B) to disclose the results of such test to such defendant and to the victim of such sexual act; and

(C) to provide to the victim of such sexual act counseling regarding HIV disease, HIV testing, in accordance with applicable law, and referral for appropriate health care and support services.

(3) For purposes of this subsection--

(A) the term "convicted" includes adjudicated under juvenile proceedings; and

(B) the term "sexual act" has the meaning given such term in subparagraph (A) or (B) of section 2245(1) of title 18, United States Code.